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Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina

Addendum

Mission to Greece (22 – 27 April 2013) * **

Summary

Since May 2010, the Government of Greece has been implementing an economic adjustment programme as a condition for securing a total financing package of €240 billion from the International Monetary Fund, the European Commission and the European Central Bank. The programme consists of stringent policy measures that entail deep public spending cuts, public sector job cuts, tax increases, the privatization of public enterprises and structural reforms (including labour market reforms), which are ostensibly aimed at reducing the country's fiscal deficit and debt to a "sustainable" level. Nevertheless, the measures have pushed the economy into recession and generally undermined the enjoyment of human rights, particularly economic, social and cultural rights, in Greece. Significantly, the public spending cuts and labour market reforms have resulted in increased unemployment (in particular among young people), homelessness, poverty and social exclusion (with approximately 11 per cent of the population living in extreme poverty), and severely reduced access to public services, such as health care and education. The impact

* Late submission.

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has been particularly severe on the most vulnerable: the poor, older persons, pensioners, persons with disabilities, women, children and immigrants.

Annex

[English only]

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to Greece

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I. Introduction

1. From 22 to 27 April 2013, the Independent Expert conducted an official visit to Greece. The key purpose of his visit was to assess the impact of the economic adjustment programme adopted by the Government of Greece as a condition for financial assistance from the troika' comprising the European Commission, the European Central Bank and the International Monetary Fund (IMF) to address the country's fiscal deficit and debt, on the realization of human rights, particularly economic, social and cultural rights.

2. The Independent Expert met with senior officials from the Ministries of Foreign Affairs, Labour and Social Welfare, Finance, Education, Health, Development, Justice, and Public Order and Citizens' Protection, as well as the Hellenic Coast Guard. He also had meetings with members of Parliament (including those from the main opposition party, Syriza) and representatives of the Bank of Greece, the National Commission for Human Rights, the National Ombudsman, IMF, the European Commission and the Office of the United Nations High Commissioner for Refugees (UNHCR) in Greece, academics and civil society organizations. He also visited two volunteer community clinics in Perama and Helleniko (Attica), which provide free health care to the needy.

3. The Independent Expert is grateful to the Government for its invitation and cooperation during his mission. He also expresses his gratitude to UNHCR for its support, as well as to all those who met with him.

4. Nevertheless, he regrets the lack of support by Greece and other European Union countries for the mandate in the Human Rights Council, despite the fact that several European Union countries (including Greece) face obvious challenges in the progressive realization of economic, social and cultural rights due to the sovereign debt crisis affecting them and in the context of economic adjustment programmes adopted to address the crisis.

II. Framework for analysis: human rights in the context of economic adjustment

5. Austerity and other economic adjustment policies raise important concerns regarding the protection of economic, social and cultural rights, because they are often incompatible with the obligation of States to take steps for their progressive realization and to avoid deliberate retrogressive measures, in particular those that are incompatible with the core obligations of each right and the duty of States to use all available resources in an effort to satisfy, as a matter of priority, these minimum obligations.[1]

A. Greece's human rights obligations

6. The Constitution of Greece sets out a number of human rights obligations of the State. Article 2(1) underscores that "respect and protection of the value of the human being constitute the primary obligation of the State". Part Two of the Constitution explicitly sets out a number of other obligations of the State, including the protection of property (art. 17); family, motherhood and childhood (art. 21.1); the special care for health (art. 21(2) and

[1] See E/2013/82. See also A/HRC/17/34, paras. 11-24.

(3)); the advancement of conditions of employment (art. 22(1)); and social security (art. 22(5)). Various rights correspond to these obligations, including the rights to equality of all Greeks (art. 4), social, economic and political participation (art. 5), information (art. 5A), petition (art. 10), peaceful assembly (art. 11), free public education (art. 16(2)), property (art. 17(2)), health care (art. 21(3)), work (art. 22(1)), social security (art. 22(5)) and freedom to unionize (art. 23). Article 21.4 specifies that "the acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care". Article 25, paragraph 1 explicitly refers to the principle of the welfare State and underscores that all public institutions are obliged to ensure the effective implementation of these rights.

7. These provisions are complemented by standards set out in several core international and regional human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the European Social Charter, to which Greece is a party.[2]

8. Under the International Covenant on Economic, Social and Cultural Rights, Greece is obliged to realize the rights enshrined therein progressively, using its maximum available resources. This requires it to adopt and implement laws and policies that aim to achieve incremental improvements in universal access to basic goods and services, such as health care, education, housing, social security and cultural life. While it does enjoy a "margin of appreciation within which to set (its) national, economic, social and cultural policies", including during austerity, it has the duty to "avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights".[3]

9. The Committee on Economic, Social and Cultural Rights has emphasized that austerity and other adjustment policies adopted by States in times of economic crisis must comply with obligations derived from the Covenant. In particular, any measure that could impede the progressive realization of economic, social and cultural rights must (a) be temporary and restricted to the period of crisis; (b) strictly necessary and proportionate; (c) not be discriminatory and take into account all possible alternatives, including fiscal measures, to ensure the necessary measures to mitigate inequalities that may arise in times of crisis; and (d) identify the minimum core content of the rights enshrined in the Covenant, or a social protection floor, as developed by the International Labour Organization (ILO),[4] and ensure the protection of this core content at all times.[5]

10. In addition, States bear the burden of establishing that austerity measures have been introduced only after the most careful consideration of all other less restrictive alternatives.[6] States cannot therefore justify austerity measures simply by referring to the need to achieve fiscal discipline and savings; they need to show why the austerity measures were necessary for the protection of the totality of the rights provided for in the Covenant.[7]

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[2] Greece is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Protection of Persons from Enforced Disappearance, the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child on a communications procedure.

[3] See the letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights, available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fSUS%2f6395&Lang=en.

[4] Social Protection Floors Recommendation, 2012 (No. 202).

[5] Ibid.

[6] E/2013/82, para. 18.

[7] Ibid., para 16. See also E/C.12/2001/1, para. 10.

11. It is notable that the Guiding Principles on foreign debt and human rights also underscore that States should ensure that their rights and obligations arising from external debt agreements or arrangements do not hinder the progressive realization of economic, social and cultural rights.[8]

B. The obligations of Greece's international lenders

12. It is increasingly accepted that non-State actors, including international financial institutions, have obligations to ensure that their policies and activities respect international human rights standards.[9] This obligation implies a duty to refrain from formulating, adopting, funding, promoting or implementing policies and programmes that directly or indirectly impede the enjoyment of human rights.[10]

13. It is also well established that States must adhere to their international law obligations when they act through international organizations.[11] Moreover, an important element of the duty of international cooperation as reflected in the Charter of the United Nations and binding international human rights treaties is that States parties, individually or through membership of international institutions, should not adopt or promote policies or engage in practices that imperil the enjoyment of human rights.

14. In circumstances where countries are constrained to implement adjustment programmes involving austerity, it should be ensured that efforts to protect the most basic economic, social and cultural rights are, to the maximum extent possible, factored into such programmes and policies.[12]

15. In tacit recognition of their role in relation to adjustment programmes, the Committee on Economic, Social and Cultural Rights has urged international financial

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[8] A/HRC/20/23, annex, para. 16.

[9] See for example Andrew Clapham, *Human Rights Obligations of Non-State-Actors* (Oxford, Oxford University Press, 2006), pp. 137-159; C. Lumina, "An assessment of the human rights obligations of the World Bank and the International Monetary Fund with particular reference to the World Bank's Inspection Panel", *Journal for Juridical Science*, vol. 31, No. 2 (2006), pp. 108-129; Roberto Dañino, "Legal Opinion on Human Rights and the Work of the World Bank", World Bank, 27 January 2006, para. 25; August Reinisch, "The Changing International Legal Framework for Dealing with Non-State Actors", in P. Alston (ed), *Non-State Actors and Human Rights* (Oxford, Oxford University Press, 2005); Mac Darrow, *Between Light and Shadow: the World Bank, the International Monetary Fund and International Human Rights Law* (Oxford, Hart Publishing, 2003); Sigrun Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (London, Cavendish, 2001); Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions*, fifth edition (London, Sweet and Maxwell, 2001), pp. 458-459. See also the Guiding Principles on foreign debt and human rights (A/HRC/20/23, annex), para. 9, and the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex).

[10] A/HRC/20/23, para. 9.

[11] See for example *Waite and Kennedy v Germany*, Application No. 26083/94, European Court of Human Rights, Grand Chamber Judgement of 18 February 1999, para. 67; *Mathews v United Kingdom*, Application No. 24833/94, European Court of Human Rights, Grand Chamber Judgement of 18 February 1999, para. 32; Willem van Genugten, "Tilburg Guiding Principles on World Bank, IMF and Human Rights", in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights* (2003), pp. 247-255; A/CN.4/564/Add.2; and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (E/C.12/2000/13), para. 19.

[12] Committee on Economic, Social and Cultural Rights, General comment No. 2, para 9. See also General comment No. 4 (right to adequate housing); General comment No. 12 (right to food); General comment No. 15 (right to water); General comment No. 18 (right to work), paras. 30 and 53; General comment No. 19 (social security), paras. 58 and 83-84.

institutions to pay enhanced attention in their activities to respect for economic, social and cultural rights, including through the explicit recognition of these rights, assisting in the identification of country-specific benchmarks to facilitate their promotion, and facilitating the development of appropriate remedies for responding to violations, and to use social safety nets to protect the poor and vulnerable in the context of adjustment programmes.[13]

16. In Greece, the European Union, the European Central Bank and IMF play an important role in the design and monitoring of the measures under the country's adjustment programme (see paragraphs 24 and 25 below). It may therefore be contended that these institutions have a duty to respect the human rights of that country's population by ensuring that the programme does not undermine the capacity of the Government to establish and maintain the conditions for the realization of human rights, including by assuring equitable access to basic public services.[14]

III. The eeconomic adjustment programme

A. Background[15]

17. In the mid-1990s, the economy of Greece started to boom as the Government borrowed large amounts from European banks to finance its imports, including military equipment,[16] from countries such as Germany. This process intensified with the adoption of the euro in 2001. The Government also borrowed extensively to fund the 2004 Olympics Games.[17]

18. The Government used its enhanced access to cheap credit (as a member State of the European Monetary Union, or euro zone) to fund public spending and offset the country's low tax revenues.[18] It also borrowed to pay for imports that were not offset by tariffs or exports. As a result, and despite annual gross domestic product (GDP) growth averaging 4.5 per cent in the period from 2000 to 2007, revenue declined substantially while the budget and trade deficits increased.

19. Widespread corruption, weak tax administration and tax evasion also put a strain on public finances.[19]

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[13] E/C.12/1998/26, para. 515.

[14] It should be noted the European Union and the European Central Bank are bound by the Charter of Fundamental Rights of the European Union, which enshrines economic and social, as well as civil and political, rights.

[15] For a discussion of the background to the debt crisis, see Jubilee Debt Campaign, *Life and debt: Global Studies of debt and resistance*, October 2013, available from http://jubileedebt.org.uk/wp-content/uploads/2013/10/Life-and-debt_Final-version_10.13.pdf; IMF, "Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement", IMF Country Report No. 13/156, June 2013 (available from www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf), pp. 5-7; Rebecca M. Nelson, Paul Belkin and Derek E. Mix, "Greece's Debt Crisis: Overview, Policy Responses, and Implications", Congressional Research Service Report for Congress, 18 August 2011, available from www.fas.org/sgp/crs/row/R41167.pdf; and Ronald Janssen, Greece and the IMF: Who Exactly is Being Saved?, Center for Economic and Policy Research, July 2010, pp. 1-2.

[16] Between 2000 and 2007, military spending reached 3 per cent of GDP – the highest in Europe.

[17] Nicole Itano, "As Olympic glow fades, Athens questions $15 billion cost", *Christian Science Monitor*, 21 July 2008. Available from www.csmonitor.com/World/2008/0721/p04s01-wogn.html.

[18] Nelson, Belkin and Mix, "Greece's Debt Crisis" (see footnote 15), p. 3.

[19] Janssen, Greece and the IMF (see footnote 15), p. 1.

20. To keep within the euro zone guidelines, previous Governments had, for many years and with the help of foreign banks, also misreported the national economic statistics, as did a number of other European Governments. In early 2010, it emerged that, with the help of Goldman Sachs, JP Morgan Chase and other banks, specific derivatives were developed so that the actual level of debt and deficits could be hidden and Greece could gain entry into the euro zone.[20]

21. The global financial crisis of 2008 had a profound impact on tourism and shipping, two of the country's largest industries; in 2009, revenues sank by 15 per cent.[21] In this context, lending to the country increased to help cope it with the impact of lower tax revenues and the need for higher government spending.[22]

22. In October 2009, the newly elected Government of George Papandreou revealed that that previous Governments had been underreporting the budget deficit. The new Government revised the overall fiscal deficit for 2009 from 5 per cent to 13.5 per cent of GDP (and subsequently to 15.6 per cent). The figure for Government debt at the end of 2009 was also revised from €269.3 billion (113 per cent of GDP) to €299.7 billion (130 per cent).[23]

23. From November 2009, Greece suffered several speculative waves, raising the interest rate on sovereign debt to prohibitively high levels. The deteriorating fiscal results led to downgrades of Government bonds by credit rating agencies in late April 2010. In effect, this curtailed the State's access to the international financial markets. To avoid defaulting on its debt, Greece turned to the European Union and IMF for financial assistance.

B. The bailout programme

24. In May 2010, Greece agreed a €110 billion loan at market-based interest rates with the European Commission, the European Central Bank and IMF.[24] The loan was conditional on Greece implementing an economic adjustment programme entailing €30 billion of fiscal cuts over the period 2010-2014. The programme, which had the two broad objectives of making fiscal policy and the fiscal and debt situation sustainable, and improving competitiveness,[25] consisted of three main components: the implementation of austerity measures to restore the fiscal balance; the privatization of State assets worth €50

[20] See for example Beat Balzli, "Greek debt crisis: how Goldman Sachs helped Greece to mask its true debt", *Spiegel Online International*, 8 February 2010, available from www.spiegel.de/international/europe/greek-debt-crisis-how-goldman-sachs-helped-greece-tomask-its-true-debt-a-676634.html.

[21] Harris A. Samaras, "Greece unlikely to escape its worst financial crisis of modern times!", Pytheas Market Focus, July 2009 (available from www.pytheas.net/docs/20090724-Greece-unlikely-to-escape-its-worst-financial-crisis-of-modern-times.pdf), p. 2.

[22] By early 2010, French, German and British banks had lent more than €70 billion to Greece.

[23] Even before the statistics were revised, Greece had exceeded during the period 2000-2010, the euro zone stability criteria, with the annual deficits exceeding the maximum limit of 3 per cent of GDP and the debt level significantly above the limit of 60 per cent of GDP.

[24] IMF was to provide €30 billion under a stand-by arrangement, while euro zone countries would provide €80 billion.

[25] IMF Country Report No. 13/154 (www.imf.org/external/pubs/ft/scr/2013/cr13154.pdf), p. 5. See also IMF, Greece: Request for Stand-By Arrangement, IMF Country Report No. 10/111, May 2010 (available from www.imf.org/external/pubs/ft/scr/2010/cr10111.pdf), p. 4.

billion by the end of 2015, to keep the debt sustainable; and implementation of structural reforms to improve competitiveness of the economy and growth prospects.[26]

25. The loan was to be disbursed in several instalments from May 2010 until June 2013. Owing to the worsening recession, however, in October 2011, the State's European partners agreed to provide it with a second bailout loan of €130 billion. This was conditional not only on the implementation of another austerity package (together with the privatization and structural reforms outlined in the initial programme), but also a restructuring of all Greek public debt held by private creditors (approximately 58 per cent of total public debt) so as to reduce the overall public debt burden by about €110 billion. Under this debt restructuring (known as "Private Sector Initiative", or PSI+) creditors were asked to accept lower interest rates and a 53.5 per cent face value loss.

26. According to information available to the Independent Expert, approximately 15,000 Greek families holding Government bonds were included in the Private Sector Initiative without their consent.[27] At current market prices, their bonds have less than 30 per cent of their nominal value.

27. The Independent Expert is concerned at allegations that, when purchasing their bonds, some Greek investors were misled by bank personnel who failed to adhere to the Markets in Financial Instruments Directive (MiFID Directive 2004/39/EC). He also received information that other bondholders relied on representations contained in official European Union and European Central Bank documentation as, well as statements made by public institutions, namely the Bank of Greece and the Public Debt Management Agency, on the State's economic health.

28. The Independent Expert is also concerned that the new maturity period for the bonds (30 years) may be too long for some older individual bondholders, who do not expect to live long enough to enjoy the return on their investment. Furthermore, some of the bondholders who invested a substantial amount of savings in bonds that they understood to be relatively safe investments for their retirement, or had planned to fund their own health-care needs or care of disabled family members from these savings, are experiencing serious financial hardship, particularly against the backdrop of severe cuts to pensions and other social benefits. He therefore urges the Government to address urgently the plight of these investors, particularly the elderly, to investigate fully the claims that public employees misled bondholders, and to take appropriate action against those found to have done so.

C. Austerity measures

29. Under the adjustment programme, the Government committed to implement rigorous austerity measures to bring the deficit down to 3 per cent of GDP by 2014. In addition to increases in value-added-tax rates, the measures included reducing public sector jobs by 150,000 through 2015, a recruitment freeze in the public sector, reduction of public sector wages, raising the retirement age, cuts in social benefits amounting to 1.5 per cent of GDP (elimination of pension bonuses, a nominal pension freeze and the introduction of means testing for unemployment benefits), eliminating bonuses and allowances, and cutting

[26] These measures were outlined in a memorandum of understanding that has been updated several times. See European Commission, "The Second Economic Adjustment Programme for Greece – Third Review, July 2013" (available from http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp159_en.pdf), pp. 99-222.

[27] This was possible because Law 4050/2012 required that a majority of bondholders convene and that a "super majority" agree to tender their bonds for exchange and accept amendments to their terms.

investment spending. The Government has committed to further spending cuts over the fiscal period 2013/14.[28]

D. Privatization

30. A key component of the adjustment programme is the sale of State-owned enterprises and assets in order to contribute to the reduction of the public debt.[29] It was initially assumed that €50 billion would be generated through the privatization process by the end of 2015. The privatization programme has not, however, been as successful as anticipated; for example, revenues generated by the end of 2012 amounted to only €1.6 billion, and proceeds in 2013 were "below expectations". The target has therefore been reduced to €24.2 billion by 2020.

31. The Independent Expert is concerned that several of the enterprises targeted for privatization provide essential public services, such as water and sanitation, transportation and energy, and that there is a likelihood of a significant increase in user fees for the services offered by these entities after privatization, with a potential negative impact on the enjoyment of basic rights. Consequently, he considers that privatization should be undertaken cautiously and with sensitivity to the rights of the population.

32. Furthermore, if the intention is to raise funds to pay down the debt, the decision to privatize the Greek national lottery, one of the most profitable in the world, may be called into question.

E. Structural reforms

33. The adjustment programme includes several "structural reforms" aimed at boosting competitiveness and enabling Greece to emerge from the crisis quickly. These include modernizing public administration by reorganizing recruitment procedures; liberalizing trade; opening up regulated professions; ensuring greater labour market "flexibility" to reduce labour entry and exit costs; strengthening the anti-corruption framework; and improving the business environment through by addressing inefficiencies in the judicial system.

34. Since 2010, a series of labour market reforms (laws 4019/2011, 3996/2011, 3986/2011, 4024/2011 and 4052/2012) have been implemented with the professed aim of increasing the competitiveness of the economy and boosting growth prospects. Specific measures include labour cost reduction and encouraging employment through the repeal of allowances and benefits; reduction of the time of notification of dismissals (Law 3863/2010); making collective bargaining "more flexible", including by waiving the so-called "principle of favourability" in collective bargaining, and firm-level agreements taking precedence over any other favourable collective (sectoral or professional) agreement (Law 3899/2010); introducing flexible forms of employment by extending the maximum duration of successive fixed-term contracts from two to three years (Law 3986/2011); and reduction of the monthly minimum wage in the private sector by 22 per cent for workers over 25 years and by 32 per cent for those under 25 (Law 4046/2012).

[28] Memorandum of understanding, 21 December 2012 (www.imf.org/external/np/loi/2012/grc/122112.pdf), pp. 17-19.

[29] The programme is overseen by the Hellenic Asset Development Fund, which includes representatives of the European Union and IMF.

35. The above-mentioned measures may well violate the standards set out in the treaties to which Greece is a party; for example, the European Committee of Social Rights of the Council of Europe has held that the reduced minimum wage for employee under 25 years violates the right to a fair remuneration in article 4 (1) of the European Social Charter, as it provides a minimum wage below the poverty level.[30]

IV. Debt sustainability

36. According to IMF, Greece's public debt was expected to peak at around 176 per cent of GDP in 2013[31] before declining to 124 per cent in 2020 and "substantially below 110 per cent of GDP in 2022".[32] In June 2013, gross external debt was estimated at 233 per cent of GDP but was expected to peak at around 240 per cent of GDP during the same year, then decline to around 145 per cent in 2020.[33] Net external debt was projected to fall from approximately 130 per cent of GDP in 2012 to around 75 per cent in 2020.[34]

37. These projections are based on the assumption that the Government will be able to maintain a primary surplus of 4 per cent in the long run, generate about €22 billion from privatization through 2020, and continue to rely on official loans at relatively low interest rates.[35] It is also based on the assumption that the economy will start to grow from 2014 and that Greece will secure additional contingent debt relief of about 4 per cent of GDP from its European partners, to be determined in 2014/15. These projections appear, however, to be overly optimistic. Indeed, it is evident that IMF has consistently underestimated the loss of GDP for Greece, lowering its projections by 6.9 per cent since its first review of the stand-by arrangement in September 2010. In June 2013, IMF admitted that it had underestimated the impact of austerity measures on the country's economy and debt sustainability.[36] Furthermore, failures with the privatization programme – the trend to date – would also raise the debt-to-GDP ratio.[37]

38. Significantly, Greece's debt, as IMF has acknowledged, is likely to remain high "well into the next decade".[38] It is also notable that its external debt burden, particularly on

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[30] See Complaint No. 66/2011, Decision on the Merits, 23 May 2013, available from www.coe.int/t/dGHl/monitoring/Socialcharter/Complaints/CC66Merits_en.pdf.

[31] Other estimates put public external debt at 180 per cent of GDP; see for example Jubilee Debt Campaign, *Life and debt* (see footnote 15) p. 11; and Economist Intelligence Unit, Country Report: Greece, London, July 2013, available from www.eiu.com/FileHandler.ashx?issue_id=240687008&mode=pdf.

[32] IMF, Greece: Fourth Review under the Extended Arrangement under the Extended Fund Facility, and Request for Waivers of Applicability and Modification of Performance Criterion – Staff Report; Staff Statement; Press Release; and Statement by the Executive Director for Greece, IMF Country Report No. 13/241, July 2013 (available from www.imf.org/external/pubs/cat/longres.aspx?sk=40838.0), p. 64. See also IMF Country Report No. 13/154, p. 49. Greece's public debt-to-GDP ratio rose from 143 per cent in 2010 to 165 per cent in 2011. This indicates that, despite declining budget deficits, GDP growth was insufficient to support a decline in the debt-to-GDP ratio during that period.

[33] IMF Country Report No. 13/241 (see footnoteabove), p. 67.

[34] Ibid.

[35] Ibid, p. 63.

[36] See IMF Country Report No. 13/156 (see footnote15).

[37] Although the adjustment programme assumed large revenues from privatization (about 15 per cent of GDP between 2010-2011 and 22 per cent of GDP by 2017), there has been little forthcoming from privatization since 2010.

[38] IMF Country Report No. 13/153 (available from www.imf.org/external/country/GRC/index.htm?type=42), p. 23.

short-term maturities, is significant. Government annual external debt payments are estimated at €23 billion (29 per cent of revenue and 42 per cent of exports).[39]

39. From a human rights viewpoint, the IMF debt sustainability assessment has limitations. It is too narrowly focused on debt repayment capacity. As the Independent Expert has stressed on previous occasions, debt sustainability analyses should include an evaluation of the level of debt that a country can carry without undermining its capacity to fulfil its human rights obligations.[40]

V. Impact of the adjustment programme on human rights

40. The economic and social costs of the adjustment programme have been substantial.[41] The economy remains in recession while output has fallen by nearly 25 per cent since 2007.[42]

41. The measures implemented as part of adjustment, in particular the job cuts, and cuts to wages and pensions, have had the overall effect of compromising the living standards of the population and the enjoyment of human rights. According to the National Ombudsman, "the drastic adjustments imposed on the Greek economy and society as a whole have had dramatic consequences on citizens, while vulnerable groups increase and multiply".[43] In a similar vein, the National Human Rights Commission observed a "rapid deterioration in living standards coupled with the dismantling of the welfare State and the adoption of measures incompatible with social justice, which are undermining social cohesion and democracy".[44]

42. The burden of adjustment does not appear to be shared fairly,[45] and the impact has been particularly severe for the most vulnerable sectors of the population: the poor, older persons, pensioners, women, children, people with disabilities and immigrants.

43. Owing to space limitations, the Independent Expert will only highlight the impact of the adjustment programme on the rights to work, social security, health, education and adequate housing, as well as its contribution to poverty and social exclusion.

A. Work

44. One of the most profound consequences of the adjustment programme has been the exponential rise in unemployment. Under the programme, the Government committed to cut 150,000 public sector jobs (about 22 per cent of public employment) by 2015. Some

[39] Jubilee Debt Campaign, *Life and debt* (see footnote 15), p. 11.

[40] See A/HRC/23/37, para. 41 and A/65/260, para. 33.

[41] IMF Country Report 13/241 (see footnote 32), p. 4.

[42] Although IMF is projecting economic growth for 2014, this is due to a €7.5 billion (2.7 per cent of GDP) stimulus programme involving highway construction approved by the Parliament of Greece in December 2013, not because of the adjustment programme. Most of the financing will come from European Union grants, and will not therefore add to State debt.

[43] Greek Ombudsman, 2011 Annual Report, English summary, (available from www.synigoros.gr/resources/ee2011-english_translation-final.pdf), p. 4.

[44] National Commission for Human Rights, Annual Report 2011 (available from http://www.rwi.lu.se/NHRIDB/Europe/Greece/NationalCommissionforHumanRightsAnnualReport2011.pdf), pp. 71-72.

[45] See IMF, Country Report No. 13/155 (available from www.imf.org/external/country/GRC/index.htm?type=42), p. 18.

80,000 to 120,000 public sector workers had already lost their jobs at the time of the Independent Expert's visit. As a result, unemployment grew from 7.3 per cent in June 2008 to 27.9 per cent in June 2013,[46] the highest in the European Union (see figure below). There are around 1.4 million unemployed people in Greece; about 778,000 persons lost their jobs during the period 2010-2013 alone. Further lay-offs in the public sector are planned. Youth unemployment reached an unprecedented rate of 64.9 per cent in May 2013 (compared with an average of 24.4 in the euro zone).[47] Thus, the prospects of a significant part of the population to access the job market and for securing an adequate standard of living have been compromised.

45. In addition, the labour market reforms under the adjustment programme have undermined the realization of the right to work. Together with successive wage cuts and tax hikes, the reforms have failed to achieve the stated goal of promoting secure growth and employment. Conversely, they have resulted in massive lay-offs, a deterioration in labour standards, increased job insecurity and widespread precariousness, with over-flexible low-paid jobs, where women and young people are predominant. The minimum wage has been pushed below poverty thresholds and has, to a large extent, lost its function as a tool for poverty alleviation.[48] In addition, more than 120,000 professionals – including doctors, engineers and scientists – have emigrated since 2010.[49]

46. It may be contended that this situation is at odds with the obligation of the State under article 22(1) of the Constitution to protect the right to work and to create conditions of employment for all citizens.

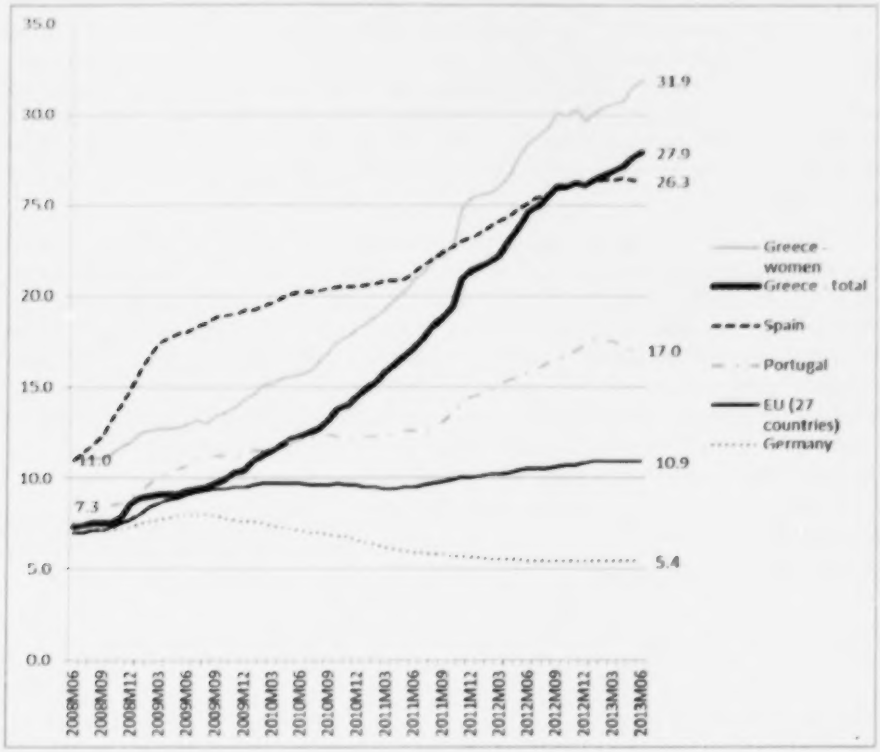
[46] Hellenic Statistical Authority, Labour Force Survey June 2013, press release, 12 September 2013,available from www.statistics.gr/portal/page/portal/ESYE/BUCKET/A0101/PressReleases/A0101_SJO02_DT_MM_06_2013_01_F_EN.pdf.

[47] Hellenic Statistical Authority, Labour Force Survey May 2013, press release, 8 August 2013.

[48] The reduction of the national minimum wage by 32 per cent to €426.64 for workers below 25 years violates their right to a fair remuneration, given that it should be above the poverty line in any given country defined at 50 per cent of national average wage, and that the lower minimum wage for young workers violates the principle of non-discrimination. See Council of Europe, Committee of Ministers, Resolution CM/ResChS(2013)3 (https://wcd.coe.int/ViewDoc.jsp?id=2029587&Site=CM).

[49] See "Brain drain: 120,000 professionals leave Greece amid crisis", *Spiegel Online International*, 10 Arpil 2013. Available from http://www.spiegel.de/international/europe/unemployment-and-recession-in-greece-lead-to-brian-drain-a-893519.html.

Unemployment rate in per cent (June 2008 to June 2013)



Source: Eurostat

47. As the figure above shows, the crisis has had a disproportionate impact on women. The rate of unemployment among women, currently estimated at 31.9 per cent, is 7 percentage points higher than that for men.[50] In addition, there has been a strong increase in involuntary part-time work since 2008, in particular among women. Some 61 per cent of all part-timers did not choose this status, an increase of 16 per cent.[51]

48. According to the Ombudsman, there have been an increasing number of complaints relating to unfair dismissal due to pregnancy, indicating increased pressures on women to turn to unpaid work or the informal economy, thereby compounding inequalities.[52]

49. The economic crisis has also contributed to rising tensions in the informal sector, where a significant number of the estimated 470,000 irregular migrants are employed.[53] These individuals face the risk of exposure to exploitative labour conditions. They also lack protection, as they have little access to legal redress mechanisms owing to fear of being detected by the authorities, detained and ultimately deported. The shooting of 33 migrant workers at a strawberry farm in Manolada in April 2013 following a labour dispute underscores the gravity of the problem.

[50] Ibid. In June 2008, the difference was 6.1 per cent.

[51] ETUI, *Benchmarking Working Europe 2013* (Brussels, ETUI aisbl, 2013), pp.12 and 65.

[52] See Greek Ombudsman, Gender and Labour Relations, Special Report 2011, executive summary, available from www.synigoros.gr/resources/docs/executive_summary.pdf.

[53] See A/HRC/23/46/Add.5, para. 4.

50. The Independent Expert commends the Government for the measures it has taken to expand employment and training programmes. These include the youth internship and employment voucher programme, which supports six-month vocational training and internships for 45,000 beneficiaries.[54] He considers it unlikely, however, that these measures can, against the backdrop of the deep reforms to the labour market, provide a sustainable solution to the country's profound youth unemployment problem or provide opportunities for decent work in line with international standards.

B. Social security

51. Significant spending cuts under the adjustment programme have affected a range of benefits, including unemployment benefits, pensions and family benefits.[55] To compound the problem, there are significant delays in issuing pension decisions, paying pensions and benefits and interpretative problems in the implementation of new pension legislation.[56]

52. Owing to the rise in long-term unemployment, only a fraction of all registered unemployed persons receive benefits (27 per cent as at February 2013). Moreover, unemployment benefits expire after 12 months, resulting in the loss of public health insurance cover. Many young people are not eligible for support because they have never had a job and have not paid the required national insurance contributions.

53. The Independent Expert notes that a modified assistance scheme to be introduced as of 1 January 2014 will expand unemployment support to all long-term unemployed persons below retirement age. Those with a family income below €10,000 will be entitled to monthly assistance of €200 per month. Nevertheless, he is of the view that this may be insufficient to protect the individuals concerned and their dependants from falling into poverty. It should be noted that the number of people living in jobless households increased from around 600,000 in 2009 to about 1.48 million during the first quarter of 2013, while the number of children living in such households grew even faster from 93,375 in 2009 to 277,149 in the first quarter of 2013.[57]

54. Consecutive cuts have reduced pensions by up to 60 per cent (for higher pensions) and between 25 and 30 per cent for lower ones. The total monthly pension income in excess of €1,000 has been reduced by 5 to 15 per cent, while Christmas, Easter and summer bonuses for pensioners have been abolished. These wholesale pension cuts have pushed a large proportion of the population into poverty.

55. The Independent Expert shares the view of the European Committee of Social Rights that the "cumulative effect" of the various laws introduced as "austerity measures" in Greece since May 2010, restricting and reducing both public and private pension benefits, constituted a violation of the right to social security enshrined in article 12(3) of

[54] See Country Report No. 13/241(see footnote 32), p. 83.

[55] Social welfare expenditure in Greece is relatively low when compared with other European countries. See OECD, *Greece: Reform of Social Welfare Programmes*, 2013 (available from www.oecd-ilibrary.org/governance/greece-social-welfare-programmes_9789264196490-en), p. 26.

[56] See Greek Ombudsman, Annual Report 2011 (see footnote 44), p. 19; *Annual Report 2012*, pp. 38-39. It should be noted that law 4151/2013 which established advance payments of pensions is intended to speed up access to pension benefits.

[57] Hellenic Statistical Authority, Living Conditions in Greece, 6 September 2013 (available from www.statistics.gr/portal/page/portal/ESYE/BUCKET/General/LivingConditionsInGreece_0913.pdf), pp. 38-39..

the European Social Charter.[58] As the Committee noted, ultimately, the pension cuts are likely to occasion "a significant degradation of the standard of living and the living conditions of many of the pensioners concerned".[59] It is therefore critical that the Government make efforts to ensure a sufficient level of protection for the most vulnerable sectors of the population.

56. In 2011 and 2012, several family benefits were abolished and replaced by a single means-tested family benefit provided according to family income.[60] The new benefit amounts to €40 per month per child (with slightly higher benefits per child for families with three or more children). However, only families with an annual income under €18,000 are eligible.

57. While the changes to the family benefit system ensure that support is provided in a more targeted fashion to those in need, the Independent Expert is concerned that eligibility criteria are very strict and require (since February 2011) 10 years of permanent and continuous residence in Greece. This has the effect of excluding large numbers of immigrants, and needs to be addressed.

58. It is notable that, to date, Greece is the only euro zone member State without a comprehensive social assistance scheme serving as a social safety net of last resort. The Independent Expert is concerned that, rather than maintain or expand social security spending to mitigate the negative social impact of the adjustment programme, the initial mid-term fiscal strategy envisioned that social programmes (excluding pensions and health) would contribute 1.5 per cent of GDP to fiscal consolidation.

59. The Independent Expert welcomes the steps taken by the Government to enhance social protection, including, inter alia, a health voucher programme, which will provide 100,000 long-term uninsured citizens with access to primary health-care services, and a review of the effectiveness of its income support programmes.[61] Nonetheless, he urges the Government to extend coverage to all, including immigrants, in accordance with the human rights obligation of non-discrimination. He also urges the Government to ensure participation of affected individuals and communities, as well as civil society organizations, in the review, design and implementation of any proposed social protection measures.

C. Health

60. A combination of cuts to health-care spending to below 6 per cent of GDP (approximately €12.4 billion in 2012) from around 10 per cent in recent years, job cuts in the public health sector, increased fees and co-payments,[62] the closure/merger of hospitals

[58] See *Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, Decision on Merits, 7 December 2012; *Panhellenic Federation of Public Service Pensioners (POPS) v Greece*, Complaint No. 77/2012; *Pensioners' Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v Greece*, Complaint No. 78/2012; *Panhellenic Federation of Pensioners of the Public Electricity Corporation (POS-DEI) v Greece*, Complaint No. 79/2012; and *Pensioners' Union of the Agricultural Bank of Greece (ATE) v Greece*, Complaint No. 80/2012.

[59] See for example *Federation of Employed Pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, Decision on merits, 7 December 2012, para. 78.

[60] Overall spending on insurance and assistance-based family benefits fell dramatically from around €1.6 billion in 2009 to €900 million by 2011. See OECD, *Greece: Reform of Social Welfare Programmes* (see footnote 55), pp. 52-53.

[61] IMF Country Report No. 13/241(see footnote 32), pp. 83-84.

[62] In October 2010, additional user fees were imposed, ranging from €3 to €5 in outpatient departments of public hospitals and health centres. In January 2012, a 15 per cent co-payment for clinical tests was

and health-care facilities, the reduction in the number of hospital beds and an increasing number of people losing public health insurance (mainly due to long-term unemployment)[63] has undermined the availability of and access to quality health care, particularly for the poorest.

61. Since 2010, Greece has reduced health-care spending significantly, to levels below the average in the European Union.[64] Public health expenditure fell from 7.1 per cent of GDP in 2010 to 5.8 per cent in 2012, and was projected to drop to 5.3 per cent in 2013, well below the 6.3 per cent average for European Union member States. Overall, the health budget has been cut by about 40 per cent.

62. The austerity policies are also creating ancillary problems with serious health implications; for example, cuts to public health spending have meant that diseases thought to have long been eradicated in the country, such as malaria, have resurfaced owing to the discontinuation of anti-mosquito spraying programmes.[65]

63. A 52 per cent increase in HIV infections was reported from 2010 to 2011.[66] Reports indicate that, although initially blamed on sex workers and irregular migrants, the outbreak was mainly due to unsafe injecting practices among drug addicts, especially desperate young Greeks facing unemployment who had turned to drugs.[67]

64. The Independent Expert is concerned that, in response to the above situation, the authorities issued a directive (Health Regulation No. GY/39A) in April 2012, which allowed the Health Department to forcibly test anyone for certain infectious diseases, including influenza, tuberculosis, polio, hepatitis and sexually transmitted diseases, including HIV. The Independent Expert is also concerned that Regulation No. GY/39A was reinstated on 26 June 2013 only a few months after it was repealed.[68]

65. It should be noted that the detention of persons for the purposes of forcibly testing them for HIV violates the right to security of the person (International Covenant on Civil and Political Rights, art. 9), as well as the International Guidelines on HIV/AIDS and Human Rights.[69] Furthermore, the publication of sensitive personal and medical data, such

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introduced for all persons insured with EOPYY, in tandem with a 25 per cent co-payment for a range of prosthetic devices, orthopaedic materials and respiratory devices. Law 4093/2012 introduced a €25 patient admission fee at public hospitals and a fee of €1 for each prescription issued by the national health-care system as of 1 January 2014.

[63] At the beginning of the crisis, it was estimated that 85 per cent of the population had public health insurance. An increasing number of people have, however, lost insurance cover owing to long-term unemployment.

[64] Within the first two years of austerity, the total expenditure of the Ministry of Health fell by €1.8 billion (a reduction of 23.7 per cent between 2009 and 2011). See Elias Kondilis et al., "Economic Crisis, Restrictive Policies, and the Population's Health and Health Care: The Greek Case", *American Journal of Public Health*, vol. 103, No. 6 (2013), p. 973.

[65] See S. Bonovas and G. Nikolopoulos, "High-burden epidemics in Greece in the era of economic crisis. Early signs of a public health tragedy", *Journal of Preventive Medical Hygiene*, vol. 53 (2012), pp. 169-171. See also David Stuckler and Sanjay Basu, *The Body Economic: Why Austerity Kills* (New York, Basic Books, 2013), pp. 86-88; and Kondilis et al., p. 976.

[66] Kondilis et al., p. 976.

[67] European Centre for Disease Prevention and Control/World Health Organization, Mission Report, Joint technical mission: HIV in Greece, 28-29 May 2012 (Stockholm, January 2013) (available from http://ecdc.europa.eu/en/publications/publications/hiv-joint-technical%20mission-hiv-in-greece.pdf), p. 1. See also David Stuckler and Sanjay Basu, *The Body Economic: Why Austerity Kills* (New York, Basic Books, 2013) p. 23.

[68] See "HIV testing in Greece: repeating past mistakes", *Lancet*, vol. 382 (2013), p. 102; and Human Rights Watch, "Greece: Repeal Abusive Health Regulation", 4 July 2013.

[69] See comments on guideline 3, para. 20 (b), and guideline 5, 22(j).

as the HIV status of persons, by the Hellenic Police and local media violates the rights to privacy (International Covenant on Civil and Political Rights, art. 17) and the confidentiality of personal health information (International Covenant on Economic, Social and Cultural Rights, art. 12).

66. There has also been a rise in mental health problems. Suicides have risen by 37 per cent since the onset of the debt crisis (from 677 in 2009 to 927 in 2011).[70] According to some studies, the rise in suicides and suicide attempts can, to a large extent, be attributed to the financial and social strain imposed on individuals by the economic crisis.[71]

67. In the context of severely reduced access to the public health-care system, there has been an increase in the number of community clinics serving a population unable to afford health insurance, nor pay for treatment and medicines. More and more Greek citizens are turning to these clinics, which were initially established to help immigrant communities, are staffed by volunteer doctors and nurses and provide free services and medicines (which are donated).

68. Access to medicines has also become a problem. In February 2013, more than 200 medical products were in short supply at hospitals and pharmacies, including drugs for arthritis, hepatitis C and hypertension, cholesterol-lowering agents, antipsychotics and antibiotics.[72] The introduction of co-payments has compounded the problem, since many patients cannot afford, in the context of severe austerity, to pay for their medication.

69. In June 2013, the National Organization for Health-care Provision (EOPYY) started to hand out free medicines to about 50,000 unemployed and uninsured persons through a network of "social" pharmacies located in Attica.[73] The Independent Expert welcomes this initiative, but is of the view that the programme needs to be significantly expanded in volume and geographical scope so as to ensure affordable access to medicines by all that need them.

70. The reforms have also restricted access to health care for undocumented migrants. Although in theory they have access to free health-care services in cases of emergency or if there is a risk to their life, in practice such access cannot be assured since it is at the discretion of medical personnel. Moreover, an official directive issued on 2 May 2012 (amending the Law 3386/2005, §84) states clearly that public services, public corporate bodies, local authorities and social security institutions do not have to provide services to undocumented third-country nationals, except in an emergency.[74]

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[70] "Greece suicide rate skyrockets, police data shows", *Ekathimerini*, 22 November 2012. See also "ELSTAT says 1,245 Greeks killed themselves in 2009-11 period", *Ekathimerini*, 28 June 2013. Official statistics might not, however, give an accurate reflection of the situation owing to the fact that many suicides are not reported as such because the Greek Orthodox Church refuses religious funerals to those whose deaths are classified as suicides.

[71] See David Stuckler et al.,"Effects of the 2008 recession on health: a first look at European data", *Lancet*, vol. 378 (2011), pp. 124-125; and M. Econoumou et al., "Suicidal ideation and reported suicide attempts in Greece during the economic crisis", *World Psychiatry*, vol. 12, No. 1 (2013), pp. 53-59.

[72] Elizabeth Sukkar and Helena Smith, "Panic in Greek pharmacies as hundreds of medicines run short", *Guardian*, 27 February 2013, available from www.theguardian.com/world/2013/feb/27/greece-blames-drug-companies-shortages.

[73] "EOPYY to give out free medicines to 50,000 Greeks", *Ekathimerini*, 1 June 2013,www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_01/06/2013_502099.

[74] Médicines du Monde, *Access to healthcare in Europe in times of crisis and rising xenophobia* Paris, 2013 (available from www.medecinsdumonde.org/content/download/13840/165088/file/DP+crisis+and+rising+xenophobia.pdf), p. 42.

71. The Independent Expert acknowledges the need for reform of the Greek health-care system. Nevertheless, he considers that the massive cuts to public funding to the health sector and the introduction of user fees, which have resulted in a large section of the population being unable to enjoy the minimum essential levels of the right to the highest attainable standard of health, as enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights, constitute retrogressive measures. He underscores that health is an important condition for the individual's well-being and dignity.[75] Greece therefore has an obligation to establish conditions under which the health of all individuals can be protected and promoted.

D. Education

72. Annual public spending on education was cut from €7.23 billion in 2009 to €5.84 billion in 2013, a reduction of 30 per cent. The education budget has been reduced by cutting government spending on human resources, as well through drastic cuts in daily operational and maintenance costs for schools and costs for purchasing educational material. These expenditures were reduced by 24 per cent in 2011 and by a further 19 per cent in 2012.[76]

73. As part of austerity, between school years 2009-2010 and 2013-2014, approximately (14.5 per cent of all school units of primary education (including pre-primary schools) and 4 per cent of school units in secondary education have been merged. The closure of schools has in certain instances significantly increased the distance for children to reach school, and limited access and increased school drop-out rates, especially among Roma children, remain a concern.[77]

74. In addition, the number of secondary school teachers has been reduced, , mainly through retirement and restrictions placed on new recruitments from mid-2010, in particular for the school year 2012-13 by about 11 per cent. It is planned that 2,500 more teachers will be placed in the mobility scheme and may eventually be retrenched. The salaries of teachers in public schools have also been cut.

75. According to the Ministry of Education, however, these funding cuts have not resulted in a deterioration of the right to education as many teachers will been reassigned according to need. Nonetheless, the Independent Expert considers that these cuts in a very short time cannot realistically be absorbed without any negative impact on the quality of public education.[78]

E. Adequate housing

76. As a result of the recession and the adjustment programme, there has been an increase in homelessness since 2009, estimated at 25 per cent. Non-governmental organizations estimate that at least 20,000 people are now homeless. Many of the "neo-

[75] See E/C.12/2000/4, para. 1.

[76] See European Commission, "Funding of Education in Europe 2000-2012: The impact of the economic crisis", Eurydice Report, 2013 (available from http://eacea.ec.europa.eu/education/eurydice.../documents/thematic_reports/147EN.pdf), p. 37.

[77] See also CRC/C/GRC/CO/2-3, paras. 60-61.

[78] See for example Iordanis Paraskevopoulos and John Morgan, "Greek Education and the Financial Crisis. Education System with a Bleak Future?", *Weiterbildung*, 5/2011, pp. 38-41.

homeless" are relatively well-educated who have found themselves in this situation owing to the financial difficulties occasioned by loss of employment and benefits.

77. As part of the fiscal consolidation, the Workers' Housing Organization, the only major institution providing housing benefits, was abolished in February 2012 and its competences transferred to the Manpower Employment Organization. The Workers' Housing Organization had provided, inter alia, a rental subsidy to nearly 120,000 households and housing benefits for non-insured elderly persons.[79]

78. At the same time, reductions in social service budgets have severely affected the ability of support services to provide assistance to the homeless at a time when they were already struggling to meet the increasing demand. For example, in November 2010, 61 of the 85 staff members at the City of Athens Homeless Foundation were laid off, greatly reducing the services that could be provided.[80]

79. In 2009, the Government took measures to protect low- and middle-income homeowners unable to service their mortgages from bank foreclosures. To this end, the Government imposed a ban on banks from repossessing primary residences worth up to €200,000. The Independent Expert understands, however, that the State's international lenders have pressed the Government to end the ban. He calls upon these lenders to avoid prescribing policy actions that may undermine Greece's international human rights obligations, including the right to adequate housing.

80. The Independent Expert shares the concern expressed by the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context that the phasing out of housing subsidies, changes to the legal protection against evictions and the emergency property tax have had a detrimental impact on the realization of the right to adequate housing for the poorest and most marginalized segments of society.[81] He calls upon the Greek authorities to introduce a comprehensive means-tested housing benefit targeted at the poor and their families, to close the social protection gap in the area of housing exacerbated by the dissolution of the Workers' Housing Organization. It should be noted that housing, like employment, is an important guarantor of human dignity.

F. Poverty and social exclusion

81. Although Greece already had the highest poverty rate in the euro zone prior to 2009, the austerity measures, particularly job redundancies and cuts to wages and benefits, have pushed even more people into poverty. Approximately 11 per cent of the population is living in extreme poverty.[82] These poverty levels have contributed to increasing inequality and social exclusion.

82. According to a study by the Athens University of Economics and Business and University of Essex, the relative poverty rate (namely, the percentage of persons having less than 60 per cent of the median income at their disposal) increased from 20 per cent in 2009

[79] See A/HRC/23/51, communication GRC 1/2013 and reply of the Government of Greece dated 16 April 2013.

[80] Nicole Fondeville and Terry Ward, "Homelessness during the crisis", research note 8/2011, European Commission - Directorate- General for Employment, Social Affairs and Inclusion, November 2011, p. 14.

[81] See https://spdb.ohchr.org/hrdb/23rd/public_-_AL_Greece_19.02.13_(1.2013).pdf.

[82] See Jubilee Debt Campaign, *Life and debt* (see footnote 15), p. 12.

to 21.29 per cent in 2012.[83] In particular, the unemployed (relative poverty rate of 41.08 per cent) and many children (26.75 per cent) have dropped under the relative poverty threshold. Data from the Hellenic Statistics Authority for 2011 indicating that 44 per cent of all unemployed have fallen under the poverty threshold confirm this trend. It should be noted that single parent households with children face a similar risk of poverty (rate of 43.2 per cent).[84]

83. Income inequality has also increased. Overall, the Gini index, taking values from 0 (total equality) to 1 (total inequality), moved from 0.3449 in 2009 to 0.3678 in 2012.[85] Although the austerity measures included elements requiring a greater contribution to the fiscal savings by the more affluent, the adjustment has nevertheless further reduced the income of population groups that were already at the bottom of income distribution in 2009, thus exacerbating their poverty. People in the lowest income decile lost 24.2 per cent of their pre-crisis income between 2009 and 2012. If income deciles are adjusted on the basis of the 2012 income distribution, the income loss of the poorest 10 per cent of the population rises to an alarming 56.5 per cent.[86]

84. It is difficult to isolate the distributive effects of the austerity policies from the wider recession, as both are closely connected. Experts nevertheless conclude that the 63.3 per cent of the population that found itself below the fixed poverty line in 2010 and 2011 did so as a consequence of austerity policies alone – meaning they can be directly attributed to changes imposed by taxation, and wage and social benefit cuts. They also note that the sharp rise in poverty and inequality was mostly due to the large drop in the income share of the poorest 10 per cent of the population.[87]

G. Other rights

85. The negative impact of the adjustment programme extends to civil and political rights; for example, the widespread public protests held against the harsh austerity measures were reportedly dealt with in a heavy-handed manner by the authorities.[88] In May 2013, the Government invoked national emergency legislation allowing it to compel public sector employees to work to ban a planned strike by the National Union for High School Teachers against austerity measures during university entrance examinations. The Government argued that the measure was necessary to prevent a severe disturbance to the social and financial life of the country and to safeguard public order, as well as the health of prospective university students.

86. The Independent Expert considers, however, that such responses are disproportionate and may violate the freedoms of assembly and association, which are also guaranteed in the Constitution.

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[83] Chrysa Leventi and Manos Matsaganis, Distributional Implications of the Crisis in Greece in 2009-2012, EUROMOD Working Paper No. EM 14/13, August 2013 (available from www.iser.essex.ac.uk/publications/working-papers/euromod/em14-13). See also Eurostat news release 171/2012, 3 December 2012, available from http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-03122012-AP/EN/3-03122012-AP-EN.PDF.

[84] Hellenic Statistical Authority, Living Conditions in Greece (see footnote 57), p. 47-49.

[85] Leventi and Matsaganis, Distributional Implications (see footnote 83), p. 22.

[86] Ibid., p. 28.

[87] Ibid., p. 35.

[88] Greek Ombudsman, *Annual Report 2011* (see footnote 43), pp. 28-29.

87. There has also been a rise in hate crimes and xenophobia against the country's immigrant community, largely targeted in an attempt to find a scapegoat for the crisis.[89] In April 2013, UNHCR, the National Commission for Human Rights and a coalition of 30 non-governmental organizations documented 154 incidents of racist violence in 2012 alone, of which 151 committed against refugees and migrants and three against European citizens. It is believed that most attacks were committed by members of extremist groups, and that only a fraction of all cases are actually documented.[90]

88. The Independent Expert is concerned at reports of the failure of the police to protect victims or to respond to such attacks and to investigate them diligently.[91] He welcomes the establishment of 70 anti-racist police units throughout the country and the appointment of a special prosecutor responsible for the coordination and proper investigation of racist crimes by the prosecuting authorities as an important step to combat such incidents. He also welcomes the submission to the Hellenic Parliament on 20 November 2013 of a new law aimed at combatting racism and xenophobia (Amendment of law 927/1979).

89. Lastly, the enjoyment of human rights has been further undermined by the limited ability of public accountability bodies, such as the Greek Ombudsman and the National Commission for Human Rights, to respond adequately to human rights issues in the context of the economic crisis owing to insufficient funding for operations. Other barriers to access to justice include lengthy proceedings before civil and administrative courts, higher fees for initiating legal proceedings and inadequate funding for legal aid.[92] The Independent Expert urges the Government of Greece to address these challenges as a matter of urgency and notes in this context that, on 12 February 2014, the Hellenic Parliament adopted a new law (4239/2014) aimed at providing fair satisfaction for exceeding the reasonable duration of proceedings in civil and criminal courts and in the Court of Audit.

VI. Conclusions and recommendations

90. **The adjustment programme and, in particular, the excessively rigid austerity measures implemented since May 2010 have exacted substantial economic and social costs for the Greek population. The programme has pushed the economy into recession, compromised the standard of living of the majority of the population and generally undermined the enjoyment of human rights in Greece. A large proportion of bailout loans has been used to pay off the banks that lent money recklessly to Greece, while increasing the country's debt. Regrettably, the role of the State as provider of accessible public services has been subordinated to the increasingly elusive goal of restoring a sustainable public budget.**

[89] Ibid., pp. 28-29. See also "The Greek Ombudsman on incidents of racist violence", press release, 3 July 2012, available from www.synigoros.gr/resources/press-release-on-racist-violence--2.pdf.

[90] UNHCR, Racist Violence Recording Network, 2012 annual report, available from www.unhcr.gr/1againstracism/en/2012-annual-report-of-the-racist-violence-recording-network/. See also the report by the Council of Europe Commissioner for Human Rights following his visit to Greece, Strasbourg 16 April 2003, CommDH(2013)6; Human Rights Watch, "Hate on the Streets. Xenophobic violence in Greece", July 2012; and Amnesty International, "Police violence in Greece", July 2012, pp. 17-23.

[91] Greek Ombudsman, "The phenomenon of racist violence", special report, 25 September 2013 (available in Greek fromwww.synigoros.gr).

[92] According to the Ministry of Justice, some 4,000 applications are made annually for legal aid, 95 per cent of which is devoted to criminal matters.

91. **On the basis of the findings set out in this report, the Independent Expert makes the recommendations below.**

A. Government of Greece

92. **The Independent Expert recommends that the Government:**

(a) Implement its international financial obligations, including those under the adjustment programme, without resorting to further public spending cuts and other austerity measures that may undermine the realization of economic, social and cultural rights in the country;

(b) Ensure that it preserves sufficient resources to enable it utilize its "maximum available resources" for the realization of all human rights and, in particular, to ensure the enjoyment of the minimum essential levels of economic and social rights in line with its international obligations;

(c) Conduct an independent, transparent and participatory audit of its debt in order to determine its origins and to identify and to hold to account those found responsible for the debt;

(d) Conduct human rights impact assessments to identify the potential negative impact of the adjustment programme and the necessary policies to address it;

(e) Intensify its efforts to combat tax avoidance and evasion and, in particular, to improve collection of outstanding tax debts;

(f) Urgently devote sufficient resources to close gaps in the social protection system;

(g) Consider expanding existing programmes aimed at addressing unemployment, particular among youth, through training and proactive labour policies;

(h) Increase the minimum wage (after taxes) as soon as possible to levels above the poverty threshold;

(i) Consider expanding the means-tested guaranteed minimum income scheme to be piloted in two regions in 2014 at the national level to close gaps in the welfare safety net, in accordance with ILO Social Protection Floors Recommendation, 2012 (No. 202);

(j) Urgently repeal or adjust any austerity measures that have had a regressive impact on income distribution;

(k) Ensure affordable access to primary health care without discrimination, and address the drop-out of persons from medical insurance owing to long-term unemployment or other reasons;

(l) Repeal as a matter of urgency Health Regulation No. GY/39A;

(m) Reconsider the reform measures that have had a negative impact on the right to education, particularly for members of vulnerable groups;

(n) Enhance support for homeless persons and increase efforts to prevent further homelessness; consider establishing a housing benefit for low-income households to fill the gap caused by the closure of the Workers' Housing Organization, and continue protection of low-income homeowners and their families

who are not able to serve their mortgages against possible eviction from their own homes;

(o) Implement recommendations by the Council of Europe Commissioner for Human Rights to curb the increase in racist attacks and xenophobic violence; and continue to take decisive measures to combat violent extremism in accordance with international human rights law;

(p) Consider ratifying core international human rights treaties to which the State is not yet a party, in particular, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

B. International lenders

93. The Independent Expert calls upon the country's international lenders:

(a) To avoid providing financial assistance with intrusive and onerous policy conditions that may undermine the country's growth prospects and the realization of all human rights;

(b) To support the undertaking by the Government of Greece to conduct an independent, transparent and participatory audit of the State's public debt;

(c) To consider a further reduction of the public debt of Greece, including a write-down of Greek bonds held by the European Central Bank, to allow the country to reduce its debt to a more sustainable level as defined in the present report;

(d) To include the reduction of unemployment and poverty as measurable targets in the ongoing adjustment programme, and to monitor progress regularly;

(e) To ensure transparency in their dealings with the Government of Greece in a manner that fully respects the rights of the people of Greece, including the right to public participation;

(f) With particular reference to IMF, to ensure that debt sustainability assessments take into consideration the other demands on the Government's available resources, particularly those required for social investment and establishment of the conditions for the full realization of all human rights, particularly economic, social and cultural rights;

(g) To consider preparing a new adjustment programme for Greece with better conditions that will allow it to address its deficit and debt problems without undermining the enjoyment of human rights.

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina

Addendum

Mission to Japan (16–19 July 2013)* **

Summary

The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, visited Japan from 16 to 19 July 2013 to assess, inter alia, the contribution of its official development assistance to the realization of economic, social and cultural rights and the right to development, as well as the attainment of the Millennium Development Goals. He also considered the extent to which human rights standards are reflected in Japanese international development cooperation and transactions backed by Japanese export credits.

Japan has a commendable international development cooperation programme, which focuses on enhancing the capacity of its partner countries to be self-reliant and ensuring that individuals and communities are free from fear and want. However, the programme could be strengthened by integrating a human rights-based approach. This would require an explicit commitment to incorporating human rights into the formulation, implementation and monitoring of Japanese development assistance policies and programmes, as well as a focus on addressing the root causes of poverty, insecurity and underdevelopment.

* Late submission.

** The summary of the present report is circulated in all the official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission only.

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Annex

[English only]

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, on his mission to Japan (16–19 July 2013)

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I. Introduction

1. The Independent Expert conducted an official visit to Japan from 16 to 19 July 2013 to assess the impact of its international development cooperation on the realization of human rights, as well as the extent to which human rights are reflected in its development cooperation policy. He also examined concerns related to the human rights and social impacts of investment projects backed by Japanese export credits and how they have been addressed by the country's export credit agencies.

2. The Independent Expert met with a broad range of stakeholders, including representatives of the Ministries of Foreign Affairs; Finance; Economy, Trade and Industry; and representatives of Japan International Cooperation Agency, Nippon Export and Investment Insurance, and Japan Bank for International Cooperation. At the invitation of the Government, he observed a policy dialogue meeting between the Ministry of Foreign Affairs and Japanese non-governmental organizations (NGOs). He also met with civil society organizations, United Nations agencies and local experts on issues within his mandate.

3. He wishes to express his gratitude to all of his interlocutors for sharing their perspectives. In particular, he is grateful to the Government of Japan for its invitation and willingness to engage in constructive dialogue.

II. Analytical context: The obligation of international assistance and cooperation

4. Japan has ratified key international human rights treaties[1] such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, both of which enshrine a fundamental principle of human rights law, international assistance and cooperation.[2] This provides the context for the assessment of Japanese international development cooperation policy undertaken in the present report.

5. In its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee on Economic, Social and Cultural Rights affirmed that "international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States" which is "particularly incumbent upon those States which are in a position to assist others in this regard" (para. 14). Similarly, in its general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child recommended that assistance provided by States should be rights-based (para. 61).

6. The obligations of international assistance and cooperation require States to conduct their activities with due regard for the human rights of the peoples of other States.[3] In that

[1] Japan is a party to all the core international human rights treaties except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

[2] See the International Covenant on Economic, Social and Cultural Rights, arts. 2 (1) and 23, and the Convention on the Rights of the Child, art. 4. The principle is also reflected in arts. 1 (3) and 56 of the Charter of the United Nations and art. 3 (3) of the Declaration on the Right to Development.

[3] See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, principles 3, 8 and 28–35, and Olivier De Schutter and others, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and

regard, States must "scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation" and must "act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights".[4] This implies that economic, social and cultural rights should be afforded due attention in all international agreements, whether bilateral or multilateral.

7. In implementing their development cooperation policies and programmes, including the provision of official development assistance (ODA), States must ensure that such policies and programmes are consistent with human rights standards and principles, including the principles of non-discrimination, participation, transparency and accountability.

8. In particular, as the Committee on Economic, Social and Cultural Rights has stated, any development assistance States provide should help partner countries to comply with their own human rights obligations (E/C.12/2001/10, paras. 16–17). States have an obligation to ensure that third parties involved in the delivery and implementation of their development assistance, such as private contractors and technical advisers, do not interfere with the enjoyment and realization of human rights in partner countries.[5]

III. International development cooperation programme

A. Development cooperation policy

9. The international development cooperation policy of Japan is guided by its Official Development Assistance Charter of August 2003,[6] which is underpinned by five basic principles: supporting the self-help efforts of developing countries, focusing on human security, assurance of fairness, utilization of Japanese experience and expertise, and partnership and collaboration with the international community. The overarching objective of Japanese development cooperation is to contribute to the peace and development of the international community, and thereby help ensure the security and prosperity of Japan.

10. The Charter identifies four priority issues: poverty reduction, sustainable growth, addressing global issues and peacebuilding.[7] In order to reduce the vulnerabilities faced by

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Cultural Rights", *Human Rights Quarterly*, vol. 34 (2012) pp. 1084–1169. See also Organization for Economic Cooperation and Development, Development Assistance Committee, "DAC action-oriented policy paper on human rights and development" (2007), principle 8. Available from www.oecd.org/development/governance-development/39350774.pdf.

[4] Committee on Economic, Social and Cultural Rights, general comment No. 2 (1990), para. 6.

[5] Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), para. 33.

[6] See www.mofa.go.jp/policy/oda/reform/revision0308.pdf.

[7] According to the Ministry of Foreign Affairs, the key priorities of development cooperation are identified annually. In 2013, they were to: (a) realize a prosperous and stable international community with freedom; (b) support emerging/developing economies to grow together with Japan; and (c) promote human security and strengthen trust in Japan. Specific efforts to realize those priorities included providing assistance to countries which shared universal values and strategic interests with Japan, developing in partner countries infrastructure systems designed by Japan, addressing environmental and climate change issues and contributing to achieving the Millennium Development Goals and the post-2015 development agenda. See www.mofa.go.jp/policy/oda/oda_policy/pdfs/priority_policy_13.pdf.

people, communities and countries, Japan addresses the priority issues identified in the Charter bearing in mind the notion of human security, which is a defining feature of its official development assistance programme.

11. Promoting human security entails focusing on individuals and building societies in which everyone can live with dignity by protecting and empowering individuals and communities that face actual or potential threats. In practice, that means: (a) protecting individuals from fears, such as conflict, terrorism, crime, human rights violations, displacement, disease epidemics, environmental destruction, economic crises and natural disasters, and from wants, such as poverty, hunger, and lack of educational and health services; and (b) establishing mechanisms that empower people so that they can address those threats.[8]

12. The concept of human security resonates with the three pillars of the United Nations, namely, peace and security, development, and respect for human rights. The Independent Expert considers that the concept requires further elaboration if it is to contribute to the effectiveness and sustainability of Japanese development assistance. In addition, the concept has an accountability deficit in that it is not underpinned by any legally binding or enforceable standards.

13. The Japanese ODA Charter is supplemented by the Japanese medium-term policy on ODA and its Country Assistance Programmes, which are formulated and implemented in accordance with the Charter. There are also sector-specific development policies and initiatives which, in 2011, focused on several issues including gender, education, health care, water and sanitation, environment, trade and investment and disaster risk reduction.

14. The bulk of Japanese ODA is provided in the form of bilateral aid, reflecting its importance as a foreign policy instrument. Japan utilizes three main channels for its bilateral development assistance: (a) loans with concessional conditions for interest and repayment; (b) grants, typically for projects, emergencies and food aid; and (c) technical cooperation involving training courses and despatch of Japanese experts and technical advisors. In 2012, its gross bilateral ODA disbursements amounted to US$ 14.46 billion. Of that amount, US$ 7.7 billion (53.3 per cent) was provided in the form of loans, US$ 3.92 billion (27.1 per cent) as grant aid and US$ 2.84 billion (19.7 per cent) in the form of technical cooperation.

15. The relatively high use of loans reflects the belief of Japan that the requirement to repay encourages recipients to be fiscally responsible and to allocate resources more efficiently. This links with its emphasis on promoting self-reliance among its partner countries.

16. In 2011–2012, the grant element of Japanese ODA was, at 88.8 per cent, lower than the Organization for Economic Cooperation and Development (OECD) average (95.2 per cent).[9] For development loans, the grant element was 75.5 per cent, but reached 98.4 per cent for ODA to least developed countries. In 2012, 71 per cent of all Japanese ODA was untied, 11.6 per cent was tied and for 17.4 per cent of its ODA, the tying status was not reported.[10] While Japan meets the 2001 OECD-Development Assistance Committee (DAC)

[8] See the Japanese medium-term policy on official development assistance, para. 2 (1) (ii). Available from www.mofa.go.jp/policy/oda/mid-term/policy.pdf. See also General Assembly resolution No. 66/290 on follow-up to paragraph 143 on human security of the 2005 World Summit Outcome (A/RES/66/290).

[9] OECD-DAC 2012 statistics, table 20 "Financial Terms of ODA Commitments". Available from www.oecd.org/dac/stats/statisticsonresourceflowstodevelopingcountries.htm.

[10] Ibid., table 23 "Tying Status of ODA by Individual DAC Members, 2012".

recommendations to untie aid, its loan assistance is overwhelmingly directed to infrastructure projects in partner countries where there are Japanese business interests.[11] The use of ODA to build international friendships and alliances and to promote Japanese interests and business overseas may, as OECD has cautioned, sometimes "override its primary development objective".[12]

17. About one third of Japanese ODA is provided to multilateral organizations. The largest recipients are the World Bank (US$ 1.55 billion) and regional development banks (US$ 969 million), followed by United Nations agencies (US$ 679 million).

18. In recent years, Japanese ODA has been declining.[13] It fell from US$ 11.06 billion in 2010 to US$ 10.83 billion in 2011 and US$ 10.60 billion in 2012. Its net ODA disbursements in 2012 represented 0.17 per cent of its gross national income (GNI), which is well below the OECD average of 0.32 per cent of GNI and significantly below the United Nations target of 0.7 per cent.

19. The Independent Expert acknowledges the economic and fiscal challenges Japan has been facing as a consequence of the global economic crisis and recent natural disasters which the country has suffered, such as the Great East Japan Earthquake in March 2011. He commends the Government for continuing to accord priority to ODA despite those setbacks. He urges the Government to set out a road map for progress towards the United Nations ODA/GNI target of 0.7 per cent as its economic and fiscal situation improves.[14]

B. Institutional framework

20. The main implementing agency of Japanese ODA is the Japan International Cooperation Agency (JICA), the world's largest bilateral aid agency. JICA works in over 150 countries and has some 100 offices around the world. It provides bilateral aid in the form of technical cooperation, loan aid and grant aid.[15] In October 2008, ODA loans, which were formerly administered by Japan Bank for International Cooperation, and grant aid, which was formerly under the supervision of the Ministry of Foreign Affairs, were integrated into the portfolio of JICA. In the fiscal year 2011, technical cooperation implemented by JICA amounted to ¥188.9 billion, grant aid to ¥107.6 billion, and loan aid disbursements of ¥609.7 billion were provided to 51 countries. JICA also administers Japan Oversees Cooperation Volunteers programmes and dispatches disaster relief teams in response to requests from governments of affected countries.

21. Other government departments, including the Ministries of Finance; Education, Culture, Sports, Science and Technology; and Economy, Trade and Industry also provide development assistance. For example, contributions to the World Bank and multilateral development banks are provided through the Ministry of Finance, while support to United Nations agencies and programmes falls under the Ministry of Foreign Affairs. The Ministry of Education mainly provides scholarship support to students from developing countries to study in Japan, while most funds channelled through the Ministry of Economy, Trade and

[11] Japan International Cooperation Agency, *Annual Report 2012*, pp. 193–196. Available from www.jica.go.jp/english/publications/reports/annual/2012/c8h0vm00002qe6vj-att/all.pdf.

[12] OECD, *Japan: Development Assistance Committee (DAC) Peer Review*, 2010, p. 30. Available from www.oecd.org/dac/peer-reviews/45470028.pdf.

[13] This is not unique to Japan.

[14] In 2002, at the International Conference on Financing for Development, Japan committed to make concrete efforts towards the 0.7 per cent ODA/GNI target, but did not set a timeline for reaching it.

[15] For more information on JICA, see www.jica.go.jp/english/.

Industry are used to dispatch experts to developing countries to improve the environment for trade and investment and to disseminate successful Japanese technologies.[16]

C. The role of civil society

22. The Government of Japan has a robust policy of engagement with local civil society organizations in relation to its international development cooperation programme. Since 1996, the Ministry of Foreign Affairs has hosted regular meetings with NGOs which are aimed at promoting a stronger partnership and dialogue on ODA policies and funding assistance for NGOs.[17] The Independent Expert thanks the Government for extending an invitation to him to observe one such meeting during his visit.

23. Beginning in 2002, meetings involving staff of Japanese embassies, other development assistance organizations and Japanese NGOs that work in developing countries have been held with a view to exchanging ideas concerning the efficient and effective implementation of Japanese ODA.[18] In addition, JICA holds meetings with civil society organizations in Japan and in partner countries in order to promote their participation in the Japanese development cooperation programme.[19]

24. Those initiatives are commendable. Nevertheless, dialogue and support for local civil society organizations in partner countries should be strengthened so as to empower them to undertake more effectively their critical role in fostering the accountability of their governments for development assistance received.

25. The Government of Japan recognizes that partnerships with NGOs in partner countries contribute not only to the socioeconomic development of those countries, but also to strengthening their civil societies. To that end, it provides Grant Assistance for Grass-Roots Human Security Projects.[20] Nevertheless, from the information available on the website of the Ministry of Foreign Affairs, it does not appear that local or international human rights organizations have received much support.[21] While there were several projects with a focus on women, children or persons with disabilities, it is unclear whether those projects focus specifically on the protection of the rights of those or other marginalized groups. It is critical that support is provided to the projects of local civil society actors representing vulnerable and disadvantaged groups in order to enable them to engage in dialogue with policymakers and enhance their capacity to assert their rights through existing judicial and other procedures at national or international level.

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[16] For more details, see the Ministry of Foreign Affairs publication, *Japan's Official Development Assistance White Paper 2012*, pp. 182–9. Available from www.mofa.go.jp/policy/oda/white/2012/pdfs/0401_2.pdf.

[17] Ministry of Foreign Affairs, *Japan's Official Development Assistance White Paper 2011*, p. 140. Available from www.mofa.go.jp/policy/oda/white/2011/pdfs/28_oda_wp_2011.pdf.

[18] Ibid., pp. 140–141.

[19] Ibid., p. 141.

[20] Ibid., p. 143. In 2011, government financial support to NGOs was US$ 369 million. Nonetheless, the percentage of Japanese ODA provided to NGOs remains low in comparison to other OECD-DAC countries. During 2010–2011, only 1.9 per cent of its ODA went to NGOs compared with an average of around 12.1 per cent for other OECD-DAC members. Around half of Japanese support for NGOs is provided or channelled through civil society organizations in Japan, while around 20 per cent of the ODA budget goes to international NGOs, and NGOs located in developing countries receive around 35 per cent. See OECD, *Aid for CSOs*, October 2013, pp. 6–7. Available from www.oecd.org/dac/peer-reviews/Aid%20for%20CSOs%20Final%20for%20WEB.pdf.

[21] See www.mofa.go.jp/mofaj/gaiko/oda/data/zyoukyou.html.

D. Private sector involvement

26. A key priority of Japanese international cooperation policies is the promotion of private sector-led growth. According to the ODA White Paper 2011, "Japanese private companies' activities in developing countries make a significant contribution beyond ODA projects, by creating opportunities for local employment, augmenting tax revenue, expanding trade and investment, contributing to the acquisition of foreign currency, and transferring Japan's superior technology".[22] In April 2008, Japan announced a policy to strengthen partnership between ODA and private investment, and to promote private sector business activities in developing countries. In addition, the Independent Expert notes that the Tokyo International Conference on African Development held in June 2013 also emphasized the role of foreign direct investment in contributing to development, which is laudable. However, it is equally important that attention is paid to enhancing the capacities of local businesses in partner countries to be internationally competitive.

27. The Independent Expert is of the view that efforts designed to boost Japanese foreign investments, including economic partnership agreements, should be consistent with relevant international human rights standards including the guiding principles on foreign debt and human rights (A/HRC/20/23, annex), the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) and relevant international labour standards.

28. Consideration should also be given to ensuring more comprehensive regulation of Japanese foreign business activities to address issues such as tax evasion and other forms of capital flight which undermine the capacity of countries to mobilize sufficient domestic resources for their development. Such an approach would be consistent with the principle of self-help, which is a key element of Japanese ODA policy, and would also contribute to international efforts to tackle illicit financial flows.

E. Debt relief

29. Although initially reluctant to support the idea of debt cancellation for highly indebted countries, Japan has provided significant bilateral debt relief and contributed to multilateral debt relief efforts.[23] Since 2003, it has cancelled ODA and non-ODA related debts amounting to US$ 18.37 billion.[24]

30. The Independent Expert commends the Government of Japan for its debt relief efforts, including those at the multilateral level. He would, however, like to draw the attention of the Government of Japan to the fact that existing multilateral debt relief initiatives show a mixed record, and have not been able to fully address the underlying causes of the debt crisis. Thus, in his report to the twenty-third session of the Human Rights Council (A/HRC/23/37), the Independent Expert called upon the international community to consider solutions that could help deliver an equitable and durable solution to the debt crisis. He urges the Government to use its influence in multilateral institutions, such as the

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[22] *Japan's Official Development Assistance White Paper 2011*, p. 141.

[23] The Government was concerned that debt cancellation would reduce the credibility of developing countries and limit their ability to borrow from international financial markets. In addition, article 8 of the Japanese Finance Act prohibited cancelling a part or all of any country's debt unless new legislation was passed requiring parliamentary approval for any debt cancellation. See Junichi Hasegawa, "International debt management: Japan's policy towards Africa", in *Japan and Africa. Globalization and foreign aid in the 21st century*, Howard P. Lehman, ed. (New York, Routledge, 2010).

[24] Information provided to the Independent Expert by the Ministry of Foreign Affairs.

World Bank, the International Monetary Fund and the Asian Development Bank, to ensure that the provision of loans or debt relief is not conditional on the implementation of unduly onerous policies that may undermine the sustainability and ownership of recipient countries' development efforts. In that regard, he encourages the Government to promote the use by the international financial institutions of the guiding principles on foreign debt and human rights, which were endorsed by the Human Rights Council in June 2012, to inform the design and implementation of their policies and programmes on lending and debt relief.

31. Additionally, in order to safeguard the gains from multilateral debt initiatives and to prevent inequitable burden sharing among creditors, it is important that all States enact legislation to curb the predatory activities of vulture funds.[25] There is currently no evidence of vulture fund litigation against States before the Japanese courts. Nonetheless, the Independent Expert urges the Government to take pre-emptive measures against such a possibility by enacting legislation that would limit the ability of vulture funds to use the Japanese courts to recover extortionate amounts from poor countries, in the process eroding the gains from international debt relief efforts to which Japanese taxpayers have contributed.

IV. Export credits and human rights

A. Export credit agencies

32. As is the case with most OECD member countries, Japan seeks to promote overseas investments and exports, as well as to maintain the international competitiveness of its industries through export credits.[26] It has two official export credit agencies: Japan Bank for International Cooperation (JBIC) and Nippon Export and Investment Insurance (NEXI), both of which are wholly owned by the State.

33. JBIC is a policy-based financial institution established under the Japan Bank for International Cooperation Act (Act No. 39 of 2011). It mainly provides various types of loans[27] for projects aiming at overseas development and securing of resources such as oil, liquefied natural gas, iron and copper, which are important for Japan, and maintaining and improving the international competitiveness of Japanese industries.[28] It also aims to support projects undertaken outside Japan that have a favourable impact on the preservation of the global environment or are aimed at preventing global warming. It is supervised by the Minister of Finance.

34. NEXI mainly provides various types of insurance to cover political and commercial risks involved in business or overseas transactions, such as export, import, investment and financing, which private insurance cannot cover.[29] In 2011, NEXI underwrote ¥7.1 trillion in export credit insurance.

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[25] See the report of the Independent Expert to the Human Rights Council (A/HRC/14/21).

[26] Export credits are government-backed loans which support companies doing business abroad, particularly for high-risk projects. Collectively, they are one of the world's largest sources of public financing for private sector projects.

[27] Such loans include overseas investment loans (60 per cent of its commitments); guarantees to supplement or encourage financing for private financial institutions (14 per cent); export loans (13 per cent); and import loans (11 per cent). Their total value was ¥1,595 billion in 2011.

[28] For more information, see www.jbic.go.jp/en/.

[29] The competent authority for NEXI is the Minister of Economy, Trade and Industry. For more

B. Human rights issues

35. While export credit agencies serve an important function in international trade and investment, they also raise important concerns, including the exacerbation of poor countries' debt problems and negative impacts on human rights and the environment, as explained in the 2011 report of the Independent Expert to the General Assembly (A/66/271). In addition, export credit agencies tend to be secretive and often lack transparency and accountability in their funding decisions and operations.

36. JBIC and NEXI have been involved in projects such as the Coral Bay Nickel Processing Plant Project, the Taganito Processing Plant Project and the San Roque Multipurpose Dam Project[30] in the Philippines; the Baku-T'bilisi-Ceyhan oil pipeline (BTC pipeline);[31] and the Papua New Guinea Liquefied Natural Gas Project,[32] all of which have generated a great deal of controversy. For example, it has been alleged that the BTC pipeline posed a number of environmental and human rights risks, and violated the safeguard policies of the World Bank.[33] In a similar vein, several environmental and human rights concerns have been raised in relation to the Coral Bay Nickel Project, including the lack of prior and informed consent from indigenous peoples, the impact on coral reefs and the leakage of hazardous waste from the tailing dams.[34]

C. Measures to address human rights and other concerns

37. The Independent Expert notes that NEXI and JBIC both have guidelines on environmental and social considerations.[35] The guidelines, which largely correspond to the safeguard policies of the World Bank, are based on the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and

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information on NEXI, see http://nexi.go.jp/en/.

30 Rivers Watch East and Southeast Asia, International Rivers Network and Friends of the Earth Japan, "Development Disasters: Japanese-Funded Dam Projects in Asia", 2003. Available from www.internationalrivers.org/files/attached-files/030309.irnjbic.pdf. NEXI was not involved in the San Roque Multipurpose Dam Project.

31 Apart from the International Finance Corporation and the European Bank for Reconstruction and Development, several export credit agencies were involved in the project, including the Export Credits Guarantee Department (ECGD) (United Kingdom), Euler Hermes (Germany), Compagnie Française d'Assurance pour le Commerce Extérieur (COFACE) (France), Servizi Assicurativi del Commercio Estero (SACE) (Italy) and the Export-Import Bank of the United States (Ex-Im Bank).

32 See Jubilee Australia, "Pipe Dreams: The PNG LNG Project and the Future Hopes of a Nation", 2012. Available at www.jubileeaustralia.org/LiteratureRetrieve.aspx?ID=112463. Other export credit agencies involved in the project are the Export-Import Bank of China, the Export Finance and Insurance Corporation (Australia), SACE (Italy) and Ex-Im Bank (United States). See www.eca-watch.org/publications/newsletter-items/ngos-warn-banks-not-to-further-finance-png-lng-project.

33 See, for example, www.thecornerhouse.org.uk/resource/bp-violating-human-rights-rules-says-uk-government.

34 See www.foejapan.org/en/aid/jbic02/rt/index.html.

35 NEXI, "Guidelines on Environmental and Social Considerations in Trade Insurance", July 2009. Available from www.nexi.go.jp/en/environment/social/. JBIC, "Guidelines for Confirmation of Environmental and Social Considerations", April 2012. Available from www.jbic.go.jp/wp-content/uploads/page/efforts/environment/confirm_en/pdf_01.pdf. See also JICA, "Guidelines for Environmental and Social Considerations", April 2010. Available from www.jica.go.jp/english/our_work/social_environmental/guideline/index.html. The term "environmental and social considerations" refers not only to the natural environment, but also to social issues such as involuntary resettlement and respect for the human rights of indigenous people (JBIC Guidelines, p. 1).

Environmental and Social Due Diligence ("the Common Approaches"). They are designed to prevent or mitigate the negative environmental and social impacts of development projects supported by NEXI and JBIC. According to the guidelines, partner countries, borrowers or other project proponents bear ultimate responsibility for environmental and social considerations of projects, but both agencies encourage their partners to take remedial measures to address the social and environmental impacts of the projects that they support.

38. It is notable, however, that neither set of guidelines offers an effective accountability mechanism. Although the guidelines provide for a procedure allowing affected persons to raise their concerns with an independent panel, the panel can only make non-binding recommendations.[36] Moreover, under the NEXI Guidelines, the examiner works under the direct control of the Chairman and Chief Executive Officer of NEXI.[37] It is also notable that the objections procedures have rarely been used,[38] suggesting that they are not well known by the affected groups or communities.

39. Those omissions should be addressed as a matter of priority. While the Independent Expert is of the view that that the existing guidelines offer some degree of protection, he believes that they could be significantly enhanced through explicit references to the international human rights obligations of Japan as well as international labour standards.

40. As a member of OECD, Japan subscribes to the Common Approaches. However, the Common Approaches are not legally binding and fail to explicitly require export credit agencies and their clients to commit clearly and unambiguously to respect human rights and establish adequate human rights due diligence processes. Moreover, the Common Approaches have failed to prevent export credit agencies from supporting a range of egregious projects.

41. States where an export credit agency-supported project is implemented have the primary responsibility to ensure that the project activities comply with their international human rights obligations. However, it is important to note that the agency's home State is also responsible for the regulation and supervision of the activities carried out by the national export credit agency that have a negative impact on the enjoyment of the human rights of the population of the host State. As noted by the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, "States should take steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies ... including, where appropriate, by requiring human rights due diligence" (A/HRC/17/31, annex, principle 4).

42. As State-owned entities, NEXI and JBIC are bound by the international human rights obligations of Japan. Ensuring compliance with human rights standards is therefore not a voluntary undertaking in support of a partner country, but a legal obligation derived from the human rights obligations binding on Japan and its public institutions, including its State-owned agencies.

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[36] See www.jica.go.jp/english/our_work/social_environmental/guideline/pdf/objection100326.pdf; http://nexi.go.jp/en/environment/objection/pdf/08b_1.pdf; and www.jbic.go.jp/en/efforts/environment/disagree/procedure.

[37] NEXI, "Annual Report FY 2011", July 2012, p. 16. Available from http://nexi.go.jp/corporate/booklet/pdf/annual2011-e.pdf.

[38] For example, only two objections have been lodged under the JBIC objections procedure. See the annual reports of the Examiners for Environmental Guidelines, available from www.jbic.go.jp/en/efforts/environment/disagree/procedure.

43. The Independent Expert urges the Government of Japan to take steps to strengthen the JBIC and NEXI guidelines by, inter alia, including requirements for comprehensive human rights impact assessments, in addition to the environmental and social impact assessments already required, and ensuring the free, active and meaningful participation, rather than mere consultation, of the affected communities.

44. Another aspect requiring attention is the lack of transparency concerning the contracts between those agencies and their clients. Non-disclosure of such contracts has been justified by reference to commercial confidentiality. In the Independent Expert's estimation, however, since the agencies are public entities, there is a duty to account to the Japanese public and to the citizens of the countries where the projects they support are located. Transparency would increase the accountability of the agencies to both the Japanese public and the citizens of the host countries and would ultimately assist Japan in complying with its extraterritorial human rights obligations, as well as the obligations of international assistance and cooperation.

V. Japanese official development assistance: Its impact on the realization of human rights and the Millennium Development Goals

A. Development assistance policy and human rights

45. The Japanese ODA Charter explicitly refers to the importance of working with countries that respect, protect and fulfil human rights. It underlines that "Japan will give priority to assisting developing countries that make active efforts to pursue peace, democratization, and the protection of human rights, as well as structural reform in the economic and social spheres".[39] It also places emphasis on the protection of individuals, their empowerment, attention to the condition of the socially vulnerable and closing the gap between the rich and the poor. Furthermore, it stresses the importance of gender equality and improving the status of women and their active participation in development.

46. The Japanese Initiative on Gender and Development, adopted in March 2005, outlines the current approach to gender mainstreaming.[40] The document stresses that "Japan will seek to promote gender mainstreaming broadly in its ODA and throughout the process of needs assessment, policy formulation, project formulation, implementation, monitoring and evaluation".[41] The policy indicates that that a gender equality perspective will be fully taken into account when country assistance programmes or sector or issue specific policies are formulated and that gender issues will be shared with recipient countries in policy dialogues. It underlines the need for gender analysis and promoting women's as well as men's participation in decision-making at the stages of planning, implementing and evaluating ODA policies and projects affecting their lives. The Initiative also incorporates assistance for policies and institutions that promote gender equality at the international and national level. This includes support in the "formulation of national policy on the advancement of women; institutional strengthening of national machinery; establishing

[39] Japanese ODA Charter, sect. I (2) (1).

[40] Initiative on Gender and Development. Available from www.mofa.go.jp/policy/oda/category/wid/gad.html.

[41] Ibid., sect. 2.

legal and institutional frameworks from a gender perspective; upgrading gender statistics; gender awareness-raising of government officials through gender training."[42]

47. Poverty reduction is another priority issue identified in the Charter and in the Medium-Term Policy on Official Development Assistance. The Charter stresses that "Japan will give high priority to providing assistance to such sectors as education, health care and welfare, water and sanitation and agriculture".[43] The Medium-Term Policy identifies direct assistance to the poor as one avenue for poverty reduction. This includes "strengthening the capabilities of the poor and of communities so as to enable the poor to participate in the formulation of aid policies, in project planning and in the implementation process".[44] The Policy mentions that "it is important to establish institutions and policies that protect the rights of the poor based on the principle of equality under the law, and to enable the poor to participate in political activities and to exercise their capabilities. Assistance will therefore be provided to contribute to the protection of human rights, the rule of law, and the promotion of democratization".[45]

B. Impact on the realization of human rights

48. It has been asserted that Japan lacks a comprehensive and coherent strategy to contribute to the promotion, protection and fulfilment of human rights in its official development cooperation. According to one observer, Japanese human rights diplomacy differs from that of other developed countries, such as the United States and the member States of the European Union, in that it is based on a "non-intrusive and accommodative approach, which is largely compatible with ASEAN's [Association of Southeast Asian Nations] diplomatic style" and that "at least in relative terms, Japan makes little effort to promote human rights in Southeast Asia".[46] In a similar vein, Human Rights Watch points to the cautious approach to human rights diplomacy adopted by Japanese officials, arguing that it is motivated by a desire to avoid jeopardizing "friendly relations with other countries, harming Japan's economic interests or risking criticism of Japan's war record".[47]

49. It is difficult, in the absence of comprehensive information from the countries receiving Japanese ODA, to assess the extent to which Japanese official development assistance impacts on the realization of human rights in such countries. It can be argued, however, that Japanese development assistance does contribute to the realization of economic, social and cultural rights in its partner countries. Projects implemented to reduce poverty through the establishment of social security schemes, promoting education, strengthening health care or providing access to clean drinking water contribute to the realization of the rights to social security, education, health or safe drinking water and sanitation, respectively. In 2009, Japanese human rights-related bilateral ODA disbursements were allocated to: health and welfare (US$ 354.45 million), gender equality (US$ 1,870.75 million) and measures relating to persons with disabilities (US$ 1,687.46 million).

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[42] Ibid., sect. 2 (3).

[43] Japanese ODA Charter, sect. I (3) (1).

[44] Medium-Term Policy on Official Development Assistance, 4 February 2005, sect. 3 (1) (ii) (b). Available from www.mofa.go.jp/policy/oda/mid-term/policy.pdf.

[45] Ibid., sect. 3 (1) (ii) (d) (i).

[46] Hiro Katsumata, "Why does Japan downplay human rights in Southeast Asia?", *International Relations of the Asia-Pacific*, vol. 6, No. 2 (2006), p. 250.

[47] Kenneth Roth and Kanae Doi (Human Rights Watch) "The Sun Rises on Human Rights," *New York Times*, 12 April 2013. Available from www.hrw.org/news/2013/04/12/sun-rises-human-rights.

50. It can also be argued that the particular efforts of Japan in disaster risk reduction protect human rights, since the ultimate aim of disaster risk reduction is not only to protect social and economic infrastructure from earthquakes, floods or other natural disasters, but to prevent loss of life and other harm to individuals. Such assistance may therefore contribute to the protection of the right to life and to physical integrity in the event of a natural disaster.

51. Nevertheless, a review of Japanese development cooperation at project level does not lead to clear conclusions concerning the human rights impacts of the country's development assistance.[48] While it can be argued that the overall aim of Japanese development cooperation is to support partner countries in one way or the other in their efforts to realize economic, social and cultural rights, human rights do not feature as prominently in bilateral development cooperation, either at policy or at project level. Very few projects can be identified as having the explicit aim to strengthen human rights, the rule of law or transitional justice, to train public officials on human rights issues or empower rights holders to claim their rights through justice mechanisms at local, national or international level. Thus, for instance, while it should be noted that Japan has contributed substantial funds to the Extraordinary Chambers in the Courts of Cambodia and supported that country's efforts in rebuilding its own legal system, efforts appear to be mainly focused on drafting basic civil and economic laws in Cambodia and several other partner countries; in that context, human rights appear not to be a major focus of Japanese assistance in the legal field.

52. While equality, human rights, the participation of the poor in political activities and the protection of the rights of the poor form part of the Japanese official poverty reduction strategy, those principles do not appear to receive much attention at project level. Furthermore, the emphasis given to poverty reduction, education, health care and welfare in policy documents is less discernible when considering which sectors receive the largest share of Japanese ODA. Nearly half of all ODA funds are devoted to economic infrastructure including transport, communications and energy or for projects related to industry, mining and construction. While those funds are also spent on small-scale infrastructure projects, most of the assistance relates to large-scale infrastructure projects. In 2011, education and health care, to which Japan devotes high priority according to its Medium-Term Policy, received a combined total of 8.4 per cent of all ODA funds.[49] Even in the education sector, approximately 70 to 90 per cent is reported to be spent on teachers' salaries,[50] while assistance devoted to basic education is limited to 0.5 per cent of all bilateral aid.[51]

53. Japan attaches a great deal of importance to the promotion of human rights through dialogue and cooperation based on mutual understanding and respect.[52] In that regard, it has held regular bilateral dialogue and consultations on human rights with the governments of more than 10 countries. In situations of concern, Japan deals cautiously with implementing

[48] See www.mofa.go.jp/mofaj/gaiko/oda/data/zyoukyou.html (in Japanese).

[49] OECD-DAC 2011 statistics, table 19 "Aid by Major Purposes".

[50] Estimate provided by Japan NGO Network on Education (JNNE).

[51] OECD-DAC 2011 statistics.

[52] According to the Ministry of Foreign Affairs, the Government provides assistance in accordance with its ODA Charter, with due regard for the principles of the Charter of the United Nations, including respect for sovereignty, equality and non-intervention in domestic affairs, and after "comprehensively determining the recipient country's needs, socioeconomic conditions and its bilateral relations with the recipient country". See *Japan's Official Development Assistance Policy White Paper 2011*, p. 135.

development assistance and conveys its deep concern to the recipient country regarding the status of democratization and human rights.[53]

54. In line with its Initiative on Gender and Development, Japan endeavours to ensure that a gender perspective is integrated into all aspects of its development assistance. According to an OECD-DAC assessment of support for gender equality and women's empowerment, in 2011, Japan allocated US$ 160 million of its ODA to activities that aim primarily to support gender equality and women's empowerment, while an additional US$ 1,851 million was allocated for activities in which gender equality was an important, but secondary, objective.[54] Although Japanese gender equality-focused aid increased significantly from around 6 per cent of all sector-allocable aid in 2002 to 19 per cent in 2011, it still remained below the OECD-DAC average of 32 per cent.[55] Japanese efforts in the area of gender mainstreaming include cooperation with international aid organizations, NGOs, research institutions and raising awareness on gender related issues among Japanese development practitioners, including training of staff in ODA related ministries and agencies.

55. Japan also promotes human rights through financial support for the human rights activities undertaken by several United Nations entities, such as the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF) and UN-Women. In 2010, for example, it contributed about US$ 5 million to UN-Women, while in 2012, it contributed significantly less — US$ 946,809.[56] In addition, its voluntary contributions to OHCHR (US$ 577,226 in 2012) have fallen. The Independent Expert urges the Government of Japan to scale up its financial support to United Nations agencies so as to enhance their effectiveness and efficiency.

56. While to a large extent development cooperation aims to assist in realizing economic, social and cultural rights, development projects may also have negative human rights impacts. In particular, large-scale infrastructure projects, such as dams, mining, oil and gas exploitation, industry, energy plants, highways or airports, can have a negative impact on communities and individuals living in the project area or region.

C. Attainment of the Millennium Development Goals

57. Japan has been a leading actor in promoting the Millennium Development Goals (MDGs) at the international level. In recent years, it has made particular efforts to support the attainment of Goals related to education and health care. At the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals in September 2010, Japan pledged US$ 5 billion in assistance to the health sector and US$ 3.5 billion to the education sector to contribute to efforts for the realization of the MDGs.[57] In June 2011, it hosted an MDG follow-up meeting jointly with the United Nations.

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[53] *Japan's Official Development Assistance Policy White Paper 2011*, p. 136.

[54] See OECD, "Aid in Support of Gender Equality and Women's Empowerment – Donor Charts", March 2013, p. 17. Available from www.oecd.org/dac/stats/Aid%20in%20support%20ENG%20for%20web%20March%202013.pdf.

[55] Ibid., pp. 4 and 17.

[56] UN-Women, *Annual Report 2012-2013*, p. 26. Available from www.unwomen.org/~/media/Headquarters/Attachments/Sections/Library/Publications/2013/6/UNwomen-AnnualReport2012-2013-en%20pdf.pdf.

[57] See *Japan's Global Health Policy 2011-15*, September 2010. Available from www.mofa.go.jp/policy/oda/mdg/pdfs/hea_pol_ful_en.pdf. See also *Japan's Education Cooperation Policy, 2011-15*, September 2010. Available from

58. Japan is also active in the discussions concerning the post-2015 development framework. The Independent Expert welcomes the fact that, in the context of the post-development framework, Japan aims to promote universal access to basic health-care services, to close the gap in access to health services between wealthy and poor people, to shift health care from a disease-oriented to a people-centred approach, and therefore to promote universal health coverage in order to satisfy broader health and medical needs.[58]

59. In the context of the discussions on the post-2015 framework, Japan has proposed a new development framework guided by the principle of human security. Although that principle recognizes the interlinkages between peace, development and human rights, its precise meaning remains unclear. This poses a problem in terms of operationalizing the principle. Furthermore, the Independent Expert considers that a human security approach may not, in itself, be sufficient to guarantee accountability for delivery on commitments in the new development framework.

60. It should be noted that the lack of an accountability mechanism for ensuring delivery on the declaratory, non-binding political commitments made by the international community in relation to the MDGs has been cited as a key reason for the inadequate progress on the Goals. Thus, it has been suggested that a post-2015 development agenda should be underpinned by human rights as a universal normative and legally binding framework embodying the minimum requirements of a life in dignity. The Independent Expert agrees. In his report to the 2013 General Assembly (A/68/542), he underscored the fact that a major shortcoming of the existing development goals is that they largely failed to integrate existing human rights obligations. He also noted that the accountability framework for the Goals, which consists of voluntary monitoring and reporting at the national level and United Nations reports on regional and global progress, is largely detached from national and international human rights accountability mechanisms. Consequently, States can report on their progress without reference to their human rights obligations and without taking into consideration the outcomes of the scrutiny of their human rights performance as undertaken by the treaty monitoring bodies.

61. The Independent Expert therefore encourages the Government of Japan to give due consideration, in the discussions concerning the post-2015 development framework, to the need for accountability mechanisms anchored to the international human rights framework which promote the active and meaningful participation of those most affected by poverty and deprivation and increase the responsiveness of the State or those in authority.

62. It is notable that accountability is a key feature of the human rights-based approach to development. From the human rights viewpoint, accountability refers to the relationship between duty bearers and the rights holders who are affected by their decisions, actions and omissions. It requires the Government and other duty bearers to take responsibility for their decisions, actions and omissions, to answer for them by explaining or justifying them to the public or those affected, and to be subject to some kind of enforceable sanction if their conduct has resulted in human rights violations.[59] Accountability also enables rights holders to access fair and transparent mechanisms to enforce their claims against duty bearers, and to obtain appropriate redress when their rights have been infringed. In that way, accountability enhances policymaking and delivery of services.

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www.mofa.go.jp/policy/oda/mdg/pdfs/edu_pol_ful_en.pdf.

[58] See Shinzo Abe, "Japan's strategy for global health diplomacy: why it matters", *The Lancet*, vol. 382 (14 September 2013), pp. 915–916.

[59] See OHCHR and Center for Economic and Social Rights, *Who will be accountable? Human Rights and the Post-2015 Development Agenda*, 2013, HR/PUB/31/1, p. 10. Available from www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf.

D. The need for a human rights-based approach

63. The Independent Expert considers that human rights could occupy a more prominent place in Japanese international development cooperation policy. In particular, the Government should make a more explicit commitment to incorporating human rights principles into the design, implementation and monitoring of its ODA policies by adopting a policy statement on human rights and development cooperation. Other leading providers of ODA, such as the Canadian International Development Agency, the Ministry of Foreign Affairs of Finland, Germany (BMZ/GIZ), the Swedish International Development Cooperation Agency, the Department for International Development of the United Kingdom of Great Britain and Northern Ireland and the United States Agency for International Development have done so.[60] Such a policy statement should be complemented by operational and implementation guidelines, related manuals and practical tools, as well as human rights training for Japanese officials working in the area of development cooperation.

64. A human rights-based approach guiding development cooperation policies and programmes promotes equality and non-discrimination, participation and empowerment, as well as transparency and accountability. It views the people as agents of their own development and brings about a shift in perspective: those in need and target groups are seen as bearers of rights and State partners as bearers of duties. A human rights-approach to development includes both support to State institutions as duty bearers, to enable them to meet their obligations, and assistance and empowerment of rights holders and civil society to ensure that they can claim their rights.

65. In the context of Japanese international development cooperation, a rights-based approach would require that human rights principles of equality and non-discrimination, participation, empowerment, transparency and accountability are reflected at all stages of formulation, implementation, monitoring and evaluation of all development cooperation policies. A rights-based approach would also prioritize support to those social groups that are most affected by discrimination: women, children, persons with disabilities, indigenous peoples and minorities. It is oriented at eliminating the structural causes of poverty, social exclusion and violent conflicts, and is compatible with the Japanese human security agenda. Meaningful participation can ensure that the interests of affected individuals are reflected in decision-making and that clashes of interest can be solved in a peaceful manner. Strengthening justice mechanisms, including non-judicial mechanisms, and ensuring that all people have access to them, also helps to resolve disputes peacefully. By ensuring non-discrimination, equity, participation and effective access to remedies and by focusing on the root causes of poverty and underdevelopment, a rights-based approach would improve the sustainability and effectiveness of Japanese development cooperation.

66. Finally, by adopting a human rights-based approach, Japan would be aligning its development cooperation policies and programmes with its international human rights obligations and other relevant international policy statements on human rights and development, such as the 2007 OECD-DAC action-oriented policy paper on human rights and development.

[60] For a recent comparative analysis, see World Bank and Organisation for Economic Co-operation and Development, *Integrating Human Rights into Development Cooperation: Donor Approaches, Experiences, and Challenges*, 2nd ed. (Washington D.C., World Bank, 2013), pp. 3–22.

VI. Conclusions and recommendations

67. **Japan has a commendable international development cooperation programme. Despite the fiscal challenges it has faced in recent years as a consequence of the global economic crisis and the natural disasters it has suffered, it continues to accord importance to development cooperation. However, its development cooperation policy could be further enhanced through, inter alia, an explicit commitment to integrating a human rights-based approach into the formulation, implementation and monitoring of the programme.**

68. **In view of the above, the Independent Expert recommends that the Government of Japan should:**

(a) Put human rights at the core of its development cooperation programme by adopting a human rights-based approach. This would require, inter alia, making a more explicit commitment to incorporating human rights principles into the design, implementation, monitoring and evaluation of its ODA policies and programmes, as well as the development of operational and implementation guidelines, related manuals and practical tools and human rights training for Japanese officials working in the area of development cooperation.

(b) Enhance its financial support to civil society organizations involved in the promotion and protection of human rights, particularly economic, social and cultural rights, in the countries receiving Japanese development assistance.

(c) Take measures to ensure that efforts aimed at promoting Japanese investments abroad are consistent with relevant international human rights standards, including the guiding principles on foreign debt and human rights, the Guiding Principles on Business and Human Rights and relevant international labour standards.

(d) Take measures to ensure more comprehensive regulation of Japanese foreign business activities in order to address issues such as tax evasion and other forms of capital flight which undermine the capacity of countries to mobilize sufficient domestic resources for their development.

(e) Continue to support multilateral and bilateral debt relief initiatives and consider measures that can deliver an equitable and durable solution to the debt crisis.

(f) Consider enacting legislation to limit the ability of vulture funds to use Japanese courts to recover extortionate amounts from poor countries.

(g) Use its influence in international financial institutions, such as the World Bank, the International Monetary Fund and the Asian Development Bank, to ensure that the provision of loans or debt relief is not conditional on the implementation of onerous policies that may undermine the sustainability and ownership of the development efforts of recipient countries. This would be consistent with the principle of ownership underscored in Japanese ODA policies and the Accra Agenda for Action.

(h) Strengthen the accountability mechanisms and safeguard policies of JICA, NEXI and JBIC by, inter alia, requiring comprehensive human rights impact assessments, in addition to environmental and social impact assessments, as well as the free, active and meaningful participation of affected individuals and communities. In particular, the safeguard policies should be clearly aligned with the Guiding Principles on Business and Human Rights.

(i) Adopt a clear road map for achieving the United Nations ODA/GNI target of 0.7 per cent as the economic situation in Japan improves.

(j) Work towards ensuring that the post-2015 development framework of the United Nations includes a robust framework to ensure accountability for the delivery of commitments.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina

Addendum

Mission to Argentina (18–29 November 2013)* **

Summary

From mid-1998 to the end of 2001, Argentina experienced a severe recession. A combination of questionable lending and policy advice by the International Monetary Fund, a global recession and reckless lending by international credit markets pushed the country to a situation of unsustainable debt that culminated in financial crisis, default and drastic social consequences for the country's population. Restructurings of the debt in 2005 and 2010 significantly reduced the country's debt burden and afforded the Government some fiscal space for social investment and the establishment of conditions for the realization of human rights.

Since 2002, Argentina has recorded impressive economic growth (averaging 7 per cent from 2003 to 2011), while social indicators have also improved considerably. Social spending has increased, rising from 10.3 per cent to around 14.2 per cent of gross domestic product. In 2009, the Government expanded its social programmes, including by introducing a conditional cash transfer programme for low-income households with the goal of reducing poverty and improving the welfare of children. The number of people

* Late submission.

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living in poverty fell by more than two thirds from a peak of almost half the population in 2001 to about one seventh of the population in early 2010, while the number of those living in extreme poverty also fell from one quarter of the population in 2001 to approximately one fifteenth in 2010. Unemployment has fallen to around 8 per cent.

These commendable achievements have been recorded in the face of adverse external circumstances, including difficulties in accessing international capital markets, little foreign direct investment and prolonged litigation by vulture funds against the country.

Although inflation has risen since 2007, peaking most recently at 27 per cent in early 2011, what is significant from the human rights viewpoint and for the well-being of the population are real income growth, employment and equitable income distribution.

Much of Argentina's current debt was incurred in questionable circumstances, particularly during military rule from 1976 to 1983, and can therefore be considered odious. During that period, banks, international financial institutions and other countries continued to lend to Argentina, indirectly supporting an illegitimate government engaged in the repression and disappearance of its opponents. It is important that those who lent to the military dictatorship accept their share of responsibility and immediately take steps to cancel this questionable debt.

For its part, Argentina should conduct a transparent, participatory and comprehensive debt audit as recommended in the Guiding principles on foreign debt and human rights. Such an audit would help promote accountability in public debt management and can usefully inform future borrowing decisions by the State as well as its debt strategy, expenditure on development plans and the realization of human rights.

Annex

[English and Spanish only]

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina

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I. Introduction

1. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights conducted a mission to Argentina from 18 to 29 November 2013. The main purpose of the visit was to assess the impact of the country's external debt burden and the restructuring of the debt on the capacity of the Government to realize all human rights, particularly economic, social and cultural rights and the right to development.

2. During his visit, the Independent Expert met with senior government officials at the ministries of Foreign Affairs; Economy and Public Finance; Justice and Human Rights; Social Welfare; Education; Health; and Labour, Employment and Social Security. He also met with the Vice-President of the Supreme Court, the National Ombudsman, as well as representatives of the Second Federal Court, the Central Bank, the World Bank, the Inter-American Development Bank, United Nations agencies, civil society and academia. In addition, he visited the cities of Cordoba and Florencio Varela and the Museum on External Debt at the School of Economics, University of Buenos Aires.

3. Regrettably, he did not have occasion to meet the committees of the Argentine Congress with responsibility for social and economic affairs as he had requested. Parliament has an important legislative and oversight role in relation to budgetary issues and public debt management. As such, its insights would have been critical for a full assessment of the situation.

4. The Independent Expert would like to thank the Government for its invitation and its cooperation during his visit. He also wishes to express his gratitude to all those who shared their perspectives with him and to the United Nations Development Programme for assisting with the preparations for his visit.

II. General context: recession, default and recovery

A. Causes of the debt crisis

5. The Argentine debt crisis of 2001 is attributable to a number of factors, including questionable lending and policy advice by the International Monetary Fund (IMF), a global recession and reckless lending by the international credit markets.[1] Structural reforms such as deregulation, trade liberalization and privatization of State-owned enterprises made Argentina extremely vulnerable to external shocks, prompting an overvalued exchange rate, producing jobless growth and raising external and fiscal deficits that ultimately led to unsustainable debt levels.

6. During the period of the military dictatorship from 1976 to 1983 (the so-called National Reorganization Process), the country borrowed extensively for unproductive

[1] For a discussion of the history of the debt crisis, see, inter alia, J.F. Hornbeck, *Argentina's Defaulted Sovereign Debt: Dealing with the "Holdouts"*, CRS Report for Congress (Washington, D.C., Congressional Research Service, February 2013), pp. 1-3; Mark Weisbrot and others, *The Argentine Success Story and its Implications* (Washington, D.C., Center for Economic and Policy Research, October 2011), pp. 2-5; Mario Damill, Roberto Frenkel and Martin Rapetti, "The Argentinean debt: history, default and restructuring", *EconomiA*, Selecta, Brasilia (DF), vol. 6, No. 3 (January/July 2005), pp. 29-90.

infrastructure, the conflict over the Falkland Islands (Malvinas) and to finance State take-over of private-sector debt.[2] Neoliberal economic policies introduced during this period led to significant economic and social problems, including massive capital flight and unemployment estimated at 18 per cent at the end of military rule in 1983. Between 1975 and 1980, the debt increased from 13.2 per cent to 32.4 per cent of gross domestic product (GDP). A devaluation of the peso in 1981 caused the foreign debt to reach a peak of almost 60 per cent of GDP in 1982.

7. In April 1991, the Menem Government introduced the "convertibility plan" with the aim of addressing the chronic inflation which plagued the country. The plan legally guaranteed the convertibility of pesos to United States dollars at a one-to-one fixed rate. Although this macroeconomic framework initially helped reduce inflation and debt service, it set the context for the financial crisis of 2001.[3] From 1989 to 1999, the debt increased by 123 per cent while interest payments on the debt rose by 253 per cent.

8. During the late 1990s, vulnerability to external shocks increased. Fiscal balances deteriorated with a strengthening dollar, to which the peso was linked, devaluations by its major regional trading partners (notably Brazil) and falling commodity prices. In particular, the 1998 Russian default and the 1999 devaluation of the Brazilian real put intense pressure on Argentina's exchange rate.[4] Inevitably, the country entered a recession, which lasted until 2000.

9. In response, the Argentine authorities implemented a succession of pro-cyclical fiscal adjustment policies supported by IMF that exacerbated the negative socioeconomic impact on the country. A toxic combination of cuts in public spending, public sector wages and jobs deepened the recession. While the hope was that foreign capital inflows would stimulate economic growth and general welfare, the results were disastrous. The country's debt rose while poverty and inequality increased. High interest rates and negative growth raised the debt-to-GDP ratio by about 10 points between 1997 and 2000.

10. By mid-2001, Argentina's country risk premium was the highest in the world, rendering the country unable to borrow on the international markets. Capital flight was also a critical problem for the Government. In the fourth quarter of 2001, the Central Bank of Argentina lost $11 billion in liquid reserves (approximately 40 per cent of its reserves). The country's banking system lost 25 per cent of its total deposits.

11. It should be noted that the international financial markets and IMF were complicit in deepening the severity of Argentina's crisis. Despite the fact that Argentina faced an impending crisis, IMF, foreign Governments and investment banks determined to chase high-yielding debt continued to lend generously to Argentina. In addition, investment banks and credit agencies overstated the country's economic health.[5] Questionable policy prescriptions by IMF compounded the problem.[6]

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[2] In 1981-1982, the public sector absorbed a considerable proportion of the private sector foreign debt, with the approval of the international banks, see Damill, Frenkel and Rapetti,, "The Argentinean debt".

[3] Hornbeck, *Argentina's Defaulted Sovereign Debt*, p. 2. The convertibility plan led to capital flight, exchange and financial crises, devaluation and default, see Damill, Frenkel and Rapetti, "The Argentinean debt", p. 38.

[4] The convertibility plan in effect prohibited the devaluation of the peso to increase exports.

[5] Paul Blaustein, *And the Money Kept Rolling in (And Out): Wall Street, the IMF, and the Bankrupting of Argentina* (New York, Public Affairs, 2005), pp. 5-8, 31-35, 198-200.

[6] From 1991 to 2001, IMF provided finance under five successive arrangements: two under the Extended Fund Facility approved in 1992 and 1998, and three Stand-By Arrangements approved in 1991, 1996 and 2000. In addition, it provided technical assistance in the fiscal and banking areas. In

12. In the view of the Independent Expert, these actors should accept their share of responsibility for Argentina's debt problem in line with the principle of shared responsibility underscored in the Monterrey Consensus.[7]

13. The financial crisis had a profound impact on Argentina. GDP shrank in the period from 1999 to 2002 by 25 per cent, official unemployment peaked at over 21.5 per cent in May 2002, savings and pensions were devaluated, and inflation of up to 41 per cent contributed to a drop in real wages by 23.2 per cent in 2002.[8] Fifty-three per cent of the population lived in poverty and 24.8 per cent faced extreme poverty.[9] The crisis also severely affected the public health system, with hospitals suffering a serious shortage of basic supplies and prices of medicines soaring.[10] In addition, the drastic drop in employment left roughly 60 per cent of the population outside the social health insurance system.

14. The crisis also resulted in the deterioration of health indicators such as infant mortality, affecting in particular the relatively more disadvantaged provinces in the north of the country, where the infant mortality rate was 25 per 1,000 live births.[11] Facing increased pressure to provide social services to a large number of poor people, the Government was forced to decrease its per capita spending on social services by 74 per cent.

B. Default

15. In December 2001, after four years of severe recession and mounting social unrest and unable to fulfil its debt obligations, the Government was forced to default. Shortly thereafter, the Government abandoned the convertibility plan and devalued the peso. Total public debt increased sharply from 45.7 per cent of GDP in 2000 to an unsustainable 166.3 per cent in early 2002.[12] The debt burden rose sharply partly due to the devaluation, which significantly increased, in terms of pesos, foreign currency-denominated obligations (most of which were in United States dollars and euros).

16. It has been suggested that Argentina had an alternative to default.[13] However, in the Independent Expert's considered view, default was inevitable: Argentina was faced with an unsustainable situation and was simply in no position to repay its massive debt without

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2004, IMF partially accepted responsibility for its role in the Argentinean crisis. See IMF, "The IMF and Argentina, 1991-2001", Evaluation Report (Washington, D.C., Independent Evaluation Office, 2004), available from www.imf.org/External/NP/ieo/2004/arg/eng/pdf/report.pdf.

[7] Report of the International Conference on Financing for Development, Monterrey, Mexico, 18–22 March 2002 (A/CONF.198/11, chap. I, resolution 1, annex), para. 47.

[8] See Argentina, National Statistics and Census Institute, www.indec.gov.ar/.

[9] PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio: Informe País Argentina 2012* (Buenos Aires, 2012), p. 3.

[10] See, for example, Centre of Legal and Social Studies, Submission to the Inter-American Commission on Human Rights, 18 October 2002, available from http://cels.org.ar/common/documentos/salud_denuncia_cidh.pdf; also Estado de los hospitales públicos del país, available from www.cels.org.ar/common/documentos/anexo_hospitales.pdf.

[11] Rafael Cortez and Daniela Romero, "Argentina: Increasing utilization of health care services among uninsured population, the Plan Nacer program", Universal Health Coverage Studies Series No. 12 (Washington, D.C., World Bank, 2013), p. 1.

[12] At the time, the country owed, among other obligations, private investors bonds with a face value of US$81.8 billion, the Paris Club countries US$6.3 billion and IMF US$9.5 billion.

[13] See, for example, Doug Bandow, "Supreme Court moves us closer to holding deadbeat Argentina accountable", available from www.forbes.com/sites/dougbandow/2013/10/21supreme-court-moves-us-closer-to-holding-deadbeat-argentina-accountable/.

risking economic and social implosion. It is important to note that the Government made several efforts to prevent the default, including, among other measures, passing a Fiscal Responsibility Law in 1999 that set a mandatory declining target for the public deficit to bring it to zero in a few years, and implementing significant tax increases and expenditure cuts (including a 13 per cent cut in public sector wages and pension benefits).

C. Debt restructuring

17. In 2005, after prolonged, contentious and unsuccessful attempts to restructure its debt, Argentina made a unilateral offer, involving a write-off of 75 per cent of the outstanding debt, but at present value rather than on a nominal basis. The Argentine legislature codified this commitment with the so-called Lock Law (Ley Cerrojo), which prohibited the Government from reopening the exchange or making any kind of future offer on better terms, and suspended any future payments on the untendered debt.[14]

18. In the end, 76 per cent of all bondholders accepted this offer; the remaining 24 per cent refused to participate. Thus, of the $81.8 billion face value of debt, $62.3 billion was exchanged for $35.2 billion of new bonds. This left a debt of $18.6 billion in dispute together with accrued interest, $6.3 billion of Paris Club arrears and $9.5 billion of IMF debt.

19. In 2006, the Government decided to repay in full the $9.5 billion owed to IMF ahead of schedule, thus freeing it from IMF policy constraints. In 2009, the Argentine legislature suspended the portion of the Lock Law that prohibited reopening a debt restructuring offer, and in 2010, the Government exchanged approximately $12.4 billion of the $18.6 billion in bonds.

20. Together, the debt restructurings of 2005 and 2010 had a participation rate of 91.3 per cent. It is estimated that $11.2 billion (including $6.8 billion in principal past and coming due, and $4.4 billion in past due interest) was owed to the "holdouts" as at the end of 2010. Of this amount, $1.3 billion is the subject of litigation by vulture funds in courts in the United States of America.

21. As a result of the debt restructurings and settlement of IMF obligations, the debt as a percentage of GDP declined from 166.3 per cent in 2002 to around 45 per cent in 2012, with public external debt representing only 14 per cent of GDP. This has enabled the Government to significantly increase its social spending, including on education, health and social security. Social spending for health, education, social security and housing in the national budget increased from 9.5 per cent of GDP in 2003 to 15.5 per cent of GDP in 2013. Overall social spending (by the national, provincial and municipal governments) rose to around 27.7 per cent of GDP by 2009.[15]

22. In January 2014, the Government began informal negotiations with the Paris Club with the aim of reaching an agreement on the settlement of Argentina's arrears to Paris Club creditors. In this context, the Independent Expert calls upon the Government of Argentina and the Paris Club to ensure that any debt restructuring agreement reflects the primacy of human rights as underscored in the Guiding principles on foreign debt and human rights (A/HRC/20/23, annex) and, in particular, that it is consistent with Argentina's obligation to ensure the satisfaction of minimum essential levels of economic and social

[14] See Hornbeck, *Argentina's Defaulted Sovereign Debt* (see footnote 1),, p. 5.

[15] Gisell Cogliandro, *Gasto Público Social en la Ley de Presupuesto Nacional 2013* (Buenos Aires, Konrad Adenauer Stiftung, 2013) p. 16, available from www.kas.de/wf/doc/kas_34958-1522-1-30.pdf?130920200601.

rights and does not compromise Argentina's ability to address ongoing concerns related to the realization of these rights as mentioned below.

D. Economic recovery

23. . The default and devaluation contributed to a profound financial crisis and a sharp economic contraction, with GDP shrinking by around 5 per cent in the first quarter of 2002. However, recovery followed only one quarter after the default and devaluation as a result of policies designed to restore the "basic macroeconomic equilibrium", including imposition of exchange controls, introduction of taxes on exports and a flexible monetary policy.[16]

24. Pro-growth policies implemented by the Government since 2003 have helped spur economic growth and restore debt repayment capacity. Policies focusing on job creation, as well as the introduction of a non-contributory social security scheme and a cash transfer of 150 pesos a month for unemployed household heads (Programa Jefes y Jefas de Hogar), reaching two million beneficiaries in May 2003, helped to reduce unemployment and poverty rates to below pre-crisis levels by 2006.

25. From 2002 to 2011, the Argentine economy grew 94 per cent — among the highest growth rates worldwide.[17] This remarkable recovery has been achieved in the face of reduced access to international financial markets and relatively little foreign direct investment.[18]

E. Debt situation

26. According to the Ministry of Economy and Public Finance, as of 30 June 2013, total public debt stood at $196 billion, of which around $66 billion is public external debt. Total external debt (private and public) was approximately $135 billion. Approximately $25 billion of the public debt is owed to multilateral financial institutions, such as the World Bank and the Inter-American Development Bank, and Paris Club creditors.[19] However, these figures do not include bonds held by creditors who did not participate in the 2005 and 2010 restructurings, which are estimated at $11.5 billion.

27. It is notable that debt service still comes at a high cost to the country. The exclusion of the country from the international financial markets has forced the Government to draw on the country's foreign reserves to service debt. As a result, reserves have fallen sharply from about $50 billion to less than $30 billion, as of November 2013. If this trend continues, the Government may face difficulties in fulfilling its debt obligations.

28. The 2014 national budget foresees that 9 per cent of the budget (up from 6.4 per cent in 2013) will be devoted to debt service alone, exceeding funds allocated for education (7.1

[16] See Damill, Frenkel and Rapetti, "The Argentinean Debt" (see footnote 1), pp. 59-60.

[17] Weisbrot and others, *The Argentine Success Story* (see footnote 1), p. 1.

[18] Ibid. According to some commentators, the 2001 default was one of the key conditions that facilitated the economic recovery that occurred shortly after. This was due to the positive fiscal effect and the suspension of debt payments and the fact that it was no longer necessary for Argentina to continuously issue signals aimed at facilitating the rollover of the debt obligations, see Damill, Frenkel and Rapetti, "The Argentinean debt", p. 34.

[19] Argentina, Ministerio de Economía y Finanzas Públicas, Oficina Nacional de Crédito Público, "Deuda Pública del Estado Argentino – Datos al 30-06-2013", available from www.mecon.gob.ar/finanzas/sfinan/?page_id=37.

per cent) and health care (3.4 per cent).[20] As education and health care are largely within the competence of the provinces, the national budget does not give a complete picture of actual government spending on health care and education. The consolidated public budget (including national, provincial and municipal budgets) indicated that, in 2009, around 14 per cent of all public spending was devoted to health care, 22 per cent to social security and 15 per cent to education.[21]

F. Key challenges

29. As a result of the default, and the refusal of a minority of creditors to participate in the debt restructurings, and subsequent legal action by these creditors and "vulture funds",[22] Argentina continues to face difficulties in accessing the international financial markets. Moreover, since it has not been able to settle its debt with the Paris Club countries, Argentina has been denied some export credits, while foreign direct investment has remained modest, at an average of around 1.7 per cent of GDP between 2003 and 2011. Thus, the Government continues to rely on domestic sources of finance, including intra-government transfers.

30. Argentina has been facing litigation in United States courts by a group of vulture funds. For example, on 21 November 2012, a court in the United States ruled that, with respect to a payment due to exchange bondholders on 15 December 2012, the bondholders and the vulture funds would have to be treated equally on the basis of its interpretation of the *pari pasu* (equal treatment) clause of the bond contracts. In effect, Argentina was required upon making its regular payment to exchange bondholders to also pay the vulture funds their full $1.3 billion claim.[23] The decision left Argentina with the unpalatable choice of fulfilling a larger and immediate financial obligation or paying neither group. This would effectively force it to default on the exchange bonds.

31. An alternative payment plan proposed by Argentina that would essentially have given the vulture funds a deal similar to that of the exchange bondholders was rejected by the vulture funds on 19 April 2013.

32. It is not the intention of the Independent Expert to discuss the merits of the lawsuit. However, he considers that Argentina's proposal would have presented a considerable return on the original investments of the vulture funds in 2008 and would have also met the equal treatment provisions. It should be noted that the vulture funds were not the original lenders to Argentina; they purchased most of the debt that they are claiming at a significant discount in the aftermath of the default. For example, NML Capital paid approximately $48.7 million for more than $220 million in defaulted bonds but is claiming an amount that would represent a profit of 1,380 per cent.

33. Moreover, the case raises broader issues beyond the particular case of Argentina. Significantly, the decision essentially reinforces the notion among creditors that refusing to

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[20] See Argentina, Ministerio de Economía y Finanzas Públicas, Presupuesto nacional 2014, gastos por programa (expenditure by programme), available from http://sitiodelciudadano.mecon.gov.ar/sici/ca11_gastos_progr.html.

[21] See Argentina, Gasto público consolidado (consolidated public spending), available from www.mecon.gov.ar/peconomica/docs/GPC1980-2009.xls.

[22] For an assessment of the impact of vulture funds from a human rights perspective, see A/HRC/14/21.

[23] United States District Court, Southern District of New York, *NML Capital, Ltd.* v. *Republic of Argentina*, No. 08 Civ. 6978 (TPG) 2012 WL 5895786 (S.D.N.Y. Nov. 21, 2012); United States Court of Appeals for the Second Circuit, *NML Capital, Ltd.* v. *Republic of Argentina*, 699 F. 3d. 246 (2d Cir. 2012).

participate in sovereign debt restructurings and suing for recovery of the full face value of the debt plus interest is an appropriate avenue to follow. In the Independent Expert's opinion, such a decision, if upheld, will undermine the ability of countries facing similar difficulties to restructure their debt in an orderly, timely, fair and efficient fashion.[24]

34. Argentina has made important progress in improving the social conditions of its people. Vulture funds and irresponsible financing decisions must not be allowed to derail that progress. The Independent Expert, therefore, firmly supports the position of the Government not to yield to unreasonable demands by some vulture funds that continue to litigate against the country in foreign jurisdictions. In this regard, he reiterates his call on all countries to enact legislation, as a matter of priority, to limit the ability of unscrupulous investors to pursue immoral profits at the expense of the poor and most vulnerable through protracted litigation. Such legislation has been enacted in the United Kingdom of Great Britain and Northern Ireland and the Channel Island of Jersey.[25] It will not affect legitimate participants in the secondary debt market but will help address the predatory behaviour of vulture funds.

III. Legal and institutional framework

A. Human rights obligations

35. Argentina has ratified all the core international human rights instruments and has also recognized the competence of most of the treaty bodies to consider petitions from persons claiming to be victims of violations of their rights under those instruments.

36. The 1994 constitutional reform explicitly gave constitutional status to several international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, and further provided for those treaties to be considered as complementing the rights guaranteed in the Constitution.[26]

37. In the terms of article 2 of the Covenant, Argentina is required to utilize "the maximum of its available resources" to ensure the full realization of the rights enshrined therein, including the rights to food, health, education, social security and work. The implication of this is that the State is obliged to ensure that these rights are adequately satisfied before using public resources to achieve other State objectives unrelated to human rights, such as debt service.[27] At the very least, the State must ensure the satisfaction of minimum essential levels of each economic, social and cultural right.[28]

38. It should be noted that the Guiding principles on foreign debt and human rights underline that States should ensure that their rights and obligations arising from an external

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[24] See United States Court of Appeals for the Second Circuit, *NML Capital, Ltd. and Others* v. *Republic of Argentina*, Case No. 12-105-cv, Brief for the United States of America as Amicus Curiae in Support of the Republic of Argentina, 28 December 2012.

[25] United Kingdom, Debt Relief (Developing Countries) Act 2010, available from www.legislation.gov.uk/ukpga/2010/22/pdfs/ukpga_20100022_en.pdf; and Jersey, Debt Relief Law (Developing Countries) (Jersey) Law 2013, available from www.jerseylaw.je/law/LawsInForce/htm/lawfiles/2013/L-01-2013.pdf.

[26] Constitution of Argentina, art. 75(22).

[27] See the Guiding principles on foreign debt and human rights (A/HRC/20/23, annex), para. 6, which underscores the primacy of human rights in relation to lending and borrowing decisions of States.

[28] See Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties' obligations, para. 10.

debt agreement or arrangement, particularly the obligation to repay external debt, do not derogate from their minimum core obligations to ensure the satisfaction of minimum essential levels of each economic, social and cultural right and do not lead to a deliberate adoption of retrogressive measures.[29] The principles further emphasize that unreasonable or excessive obligations to repay external debt should not hinder the progressive realization of economic, social and cultural rights,[30] and recommend that States conduct transparent and participatory periodic audits of their debt portfolios to ensure accountability in the management of the State's external debt stock and to inform future borrowing decisions.[31]

B. Institutions

39. The Republic of Argentina is a federal State, comprising 23 provinces and the Autonomous City of Buenos Aires (which in many ways has a similar legal status to the provinces). The provinces, the Autonomous City of Buenos Aires and the municipalities enjoy autonomy, subject to the Constitution.

40. At the national level, a number of institutions have responsibility for the promotion, protection and fulfilment of human rights.

41. Both federal and provincial courts have jurisdiction over human rights matters, while the Supreme Court and the lower courts have competence to rule on all matters governed by the National Constitution, national legislation or international treaties. It is notable that the Supreme Court has played an important role in enforcing social and economic rights through its power of review. For example, it has upheld the rights to health,[32] food[33] and housing;[34] recognized the constitutional right of retirees to pension increases;[35] and struck down public sector wage cuts imposed in the aftermath of the 2001 debt crisis to meet debt payment obligations.[36] In the case of Hugo Galli,[37] Supreme Court judges Raúl Zaffaroni and Ricardo Lorenzetti held that while contractual debt repayment obligations usually have to be fulfilled, such obligations may be limited in situations of extreme crisis where the State would otherwise not be able to provide essential services for its citizens and uphold the minimum standards of human rights as required by international treaties that have constitutional rank.

42. The Office of the Secretary for Human Rights in the Ministry of Justice deals with a broad range of human rights, including economic, social and cultural rights.

43. Finally, a number of independent public bodies at both the national and provincial levels play an important role in protecting and promoting human rights. For instance, the mandate of the National Ombudsman (Defensor del Pueblo de la Nación) is to defend and

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[29] A/HRC/20/23, annex, paras. 18 and 20.

[30] Ibid., para. 16.

[31] Ibid., paras. 67-70.

[32] Supreme Court of Argentina, *Asociación Benghalensis y otros*, 2000, Fallos: 323:1339, ordering the Federal Government to provide comprehensive medical treatment, including access to drugs, to all those infected with HIV in the country.

[33] Ibid., *Rodríguez, Karina Verónica*, 2006, Fallos: 329:553.

[34] Ibid., *Q.C., S.Y.*, 2012, Fallos: 335:452, ordering the City of Buenos Aires to provide decent accommodation to a foreign-born woman and her disabled child who were living on the streets.

[35] Ibid., *Badaro, Adolfo Valentín*, 2006, Fallos: 329:3089.

[36] Ibid., *Tobar, Leonidas*, 2002, Fallos: 325:2059.

[37] Ibid., *Galli, Hugo Gabriel*, 2005, Fallos: 328:690.

protect human rights as well as to investigate public maladministration.[38] In this regard, the Ombudsman has been active on several issues, such as access to social security benefits, pensions and family allowances; health and education; services of public utilities, such as water and sanitation; environmental pollution affecting, among others, the rights to health, adequate housing and water and sanitation;[39] and access to public transport of persons with disabilities.

C. Framework for public debt management

44. Under the National Constitution, the Congress[40] is empowered "to borrow money on the credit of the Nation"[41] and to settle the payment of the domestic and foreign debt of the country.[42] It has been asserted that this requirement is fulfilled by the Congress through the approval of budget acts which determine annually the budget of the State, including its provision for debt service payments. In the Independent Expert's view, however, article 75, paragraph 7, of the National Constitution provides for a more active role of Congress in public financial management than the mere passing of budgetary acts.

45. In the terms of article 85, the National General Auditing Office, a technical advisory body of the Congress, must participate in the approval or rejection of the public revenue and investment accounts.

46. The Fiscal Responsibility Law of 2004 sets out rules of fiscal transparency as well as fiscal targets for the national and provincial governments and the federal capital district. The procedural rules and transparency requirements include three-year budgets; that new borrowing or guarantees must be approved by the Ministry of Economy and Public Finance; that provincial governments may not issue non-peso domestic bonds; and the publication of fiscal accounts and all debt-related transactions. The Law further enjoins the national and provincial governments to put money into stabilization funds and establishes a federal council for fiscal responsibility, with membership from the national and all the provincial ministries of finance.

47. In terms of fiscal targets, the provinces have to budget primary surpluses sufficient to bring their debt service gradually below 15 per cent of current revenues (net of transfers to municipalities) and may not engage in new borrowing if their debt service exceeds the ceiling. The national Government has to maintain a downward trend in debt, measured in terms of GDP.

48. It is notable that the National Public Credit Office provides technical assistance to the provincial debt management offices.

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[38] National Constitution of Argentina, art. 86; see also Act 24.284 on the Organic and Functional Regulation of the Office of the *Defensor del Pueblo*.

[39] See, for example, the work of the National Ombudsman on the Mantanza-Riachuelo Basin, available from www.dpn.gob.ar/areas.php?cl=24&act=list.

[40] Consisting of the House of Deputies, comprising representatives directly elected by the people of each province and the Autonomous City of Buenos Aires or the capital city, and the Senate, comprising three senators from each province and three from the City of Buenos Aires.

[41] National Constitution of Argentina, art. 75(4).

[42] Ibid., art. 75(7).

IV. Realization of human rights

49. It is generally accepted that the debt crisis of 2001 had a severe impact on the enjoyment of a broad range of human rights, including the rights to work, social security, health and education.[43] However, the restructuring of the debt has provided the Government with larger fiscal space for social investment. In addition, since 2003, the Government has implemented a number of policies to promote economic growth with social inclusion. These policies have significantly contributed to the establishment of the conditions for the realization of human rights and improvement of the well-being of the Argentine population.

50. Nevertheless, some challenges remain, particularly with regard to addressing poverty and ensuring social inclusion. In the following sections of the present report the impact of the Government's policies on the realization of the rights to work, social security, health, education and adequate housing as well as on poverty is briefly discussed.

A. Work

51. In the aftermath of the 2001 crisis, the Government of Argentina implemented a series of policies aimed at creating jobs and improving working conditions. In October 2003, for example, the Government adopted the 2003–2015 Millennium Development Goals for Argentina, which included a goal on promoting decent work. Specific objectives under the goal included reducing the unemployment rate to less than 10 per cent; reducing the rate of informal employment to less than 30 per cent; extending social protection coverage to 60 per cent of the unemployed population; decreasing to less than 30 per cent the share of workers earning a salary below the cost of the basic family food basket; and eradicating child labour.

52. In 2004, the Government reviewed the minimum wage determined by the National Council for Employment, Productivity and Minimum Living and Mobility Salary, a body consisting of representatives of the State, employers and workers.

53. As a result of these policies, the official unemployment rate has fallen and the minimum wage has been increased. According to official estimates, during the third quarter of 2013, the unemployment rate was 6.8 per cent. The monthly minimum wage for the period from August to December 2013 was 3,300 pesos (about $500 at the official exchange rate at the end of 2013) and has been increased to 3,600 pesos as of 1 January 2014.[44] According to the Ministry of Labour, Employment and Social Security, the average real salary of registered workers grew constantly after the crisis low of 2002, reaching levels of the mid-1980s by 2009.[45] As a consequence, the number of workers employed in the formal sector earning a salary below the cost of the basic food basket was reduced by 66.3 per cent in 2011.[46]

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[43] See, for example, E/C.12/1/Add.38, paras. 10 and 28; Jason Morgan-Foster, "The relationship of IMF structural adjustment programs to economic, social and cultural rights: the Argentine case revisited", *Michigan Journal of International Law*, vol. 24 (Winter 2003), pp. 577-646.

[44] Different minimum wages apply for domestic workers; as of 1 September 2013, the minimum wage for domestic workers was 3,220 pesos.

[45] Argentina, Ministerio de Trabajo, Empleo y Seguridad Social, *Work and Employment in the Bicentenary: Changes in employment and social protection dynamic for an extended inclusion, 2003-2010*, September 2010, p. 43.

[46] PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio: Informe País Argentina 2012* (Buenos Aires, 2012), p. 22.

54. However, a number of challenges remain, which require attention. First, there are high gender-based inequalities in the labour market: women earn lower incomes than men; have higher rates of unemployment (8.7 per cent compared with 6 per cent for men); enjoy lesser access to formal salaried employment (63 per cent compared with 69 per cent for men); and earn a lower income per hour worked.[47]

55. Second, although informal unregistered employment declined from 42.8 per cent in 2003 to 33.3 per cent in 2011, it remains one of the most serious challenges in the Argentine labour market.[48] Informal workers do not have health insurance coverage for themselves or members of their families, and do not contribute to pension funds, nor are they protected by unemployment insurance.[49] While the Independent Expert acknowledges the progress made, further efforts on the part of the Government are required to reach the goal of moving non-registered employment below 30 per cent by 2015.[50] He urges the Government to intensify its efforts to promote the registration of employment, as some surveys indicate that the percentage of workers not contributing to the social security system may have increased slightly during the past few years, notwithstanding government campaigns.[51]

56. Finally, more effort is required to address the problem of child labour, particularly in the agricultural and informal sectors. While the Prohibition of Child Labour and Protection of Adolescent Employment Act (No. 26.390) is an important step in the fight against child labour, children continue to bear the highest costs of poverty and, in many cases, provide substitute or complementary labour to satisfy household needs. Research indicates that in urban areas, 6.2 per cent of children between the ages of 5 and 13 years undertake economic activities, and a further 2.7 per cent of children in that age group are engaged in intensive domestic work.[52]

B. Social security

57. The additional fiscal space after 2005 has allowed the Government to significantly expand its non-contributory social protection schemes. The increase of formal employment and a simplified regime for small taxpayers (*el monotributo*) has ensured that a large number of workers now have access to social security. A pension inclusion plan, allowing pensioners who, owing to the economic crisis, had not completed 30 years of contributions to receive a reduced pension benefit, and the introduction of a non-contributory minimum pension in 2005 increased overall pension coverage for elderly people from 47 per cent in 2005 to about 96 per cent in 2010. The overall number of persons receiving retirement benefits increased from 3.2 million in 2005 to 5.4 million in 2012. In addition, a law was

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[47] International Labour Organization (ILO), *3rd Decent Work Country Programme for Argentina: 2012-2015 Period*, (Buenos Aires, 2013), p. 19.

[48] Ibid., p. 21.

[49] Non-registered workers and their family members can, however, access the public health system which provides universal access, see para. 61 below.

[50] ILO, *3rd Decent Work Country Programme for Argentina*, p. 23.

[51] According to the Argentina Social Debt Observatory (ODSA), the overall percentage of persons working without contributing to the social security system increased from 47.2 per cent in 2010 to 49.4 per cent in 2012, see Agustín Salvia and others, *Desajustes en el desarrollo humano y social (2010-2011-2012)* (Buenos Aires, ODSA, Universidad Católica Argentina, 2013), p. 164.

[52] Ianina Tuñón, (coordinator), *Hacia el pleno ejercicio de derechos en la niñez y adolescencia: propensiones, retos y desigualdades en la Argentina urbana (2010-2012)*, (Buenos Aires, ODSA, Universidad Católica Argentina, 2013) pp. 120-121.

passed ensuring automatic adjustments of pension benefits based on consumer price indices.[53]

58. In November 2009, a universal child allowance (*Asignación Universal por Hijo*) for all children under 18 years of age was introduced with the goal of reducing poverty and improving the welfare of children. This was a conditional cash transfer programme for low-income households. In April 2013, 3.28 million children received this benefit.[54] Evaluations by the Ministry of Labour and independent research show that the allowance has helped to reduce extreme poverty for families with children; has increased primary school enrolment by 10 per cent and secondary school enrolment by 20 per cent; and has expanded the participation of children in regular medical checks and vaccinations, as applicants for this benefit are required to show proof of schooling and participation in an official health programme for their children in order to receive the full amount.

59. The Independent Expert commends the Government for the social policies described above. Nevertheless, he is concerned that some of the social benefits exclude certain marginalized and disadvantaged groups, such as migrants and their children. For example, access to non-contributory old age pensions requires 40 years of continued residence in the country; access to a disability pension, 20 years of continued residence; and access to a pension for mothers with more than seven children, 15 years of continued residence. In the case of the universal child allowance, Decree No. 1602/2009, establishing the benefit, requires that the child beneficiary have Argentine nationality, be a child of an Argentine national or have at least three years of legal residence in Argentina, before his or her guardian is able to access this benefit.[55] Although in September 2007 the Supreme Court declared the 20-year residence requirement unconstitutional in a case concerning disability benefits, excessive residency requirements to access social benefits remain.

60. The Independent Expert therefore urges the Government to implement the recommendations of the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3, para. 20), the Committee on Migrant Workers (CMW/ C/ARG/CO/1, paras. 29 and 30) and the Committee on the Rights of Persons with Disabilities (CRPD/C/ARG/CO/1, paras. 45 and 46) and adopt the necessary measures to ensure unrestricted coverage of social benefits, including non-contributory pensions and the universal child allowance, for marginalized and disadvantaged groups, such as migrants and their children.

C. Health

61. The country's public health system provides universal access. At around 10 per cent of GDP, health expenditure is higher than that of other Latin American countries, but resources are unevenly distributed. Health expenditure of around 8 per cent of GDP serves about 64 per cent of the population, who have either private health insurance or are covered by social security-based health insurance, while the remaining 36 per cent of the population have to rely exclusively on public sector health services, which receive only about 2 per

[53] Information provided by the Ministry of Labour.

[54] Ibid.

[55] For more information, see Centro de Estudios Legales y Sociales, *Derechos humanos en Argentina. Informe 2012* (Buenos Aires, Siglo Veintiuno Editores, 2012) pp. 344-348, available from http://cels.org.ar/common/documentos/Informe2012.pdf.

cent of GDP.[56] Depending on province, region and location, there are significant discrepancies in the quality and accessibility of health care. For example, between 2003 and 2009, the City of Buenos Aires spent 24 per cent of its budget on health care. However, more disadvantaged regions, like the provinces of Missiones and Buenos Aires, devoted only about 7 to 8 per cent of their budget to health care.[57] The Government has acknowledged that such inequalities still need to be addressed in order to guarantee effective compliance with the right to health in the country.[58]

62. In November 2004, the Government introduced the Plan Nacer programme, a maternal and infant health programme, which strengthened health services provided to uninsured pregnant women and women who had just given birth, as well as children under the age of 6. By April 2012, Plan Nacer had provided health coverage to more than 4.5 million pregnant women and children, and reached 89.7 per cent of the eligible population.[59] The programme provided additional funds to provincial ministries of health, based on delivery of services and 10 tracers to measure results, one of them tracking the inclusion of indigenous communities in health services.

63. While Plan Nacer has contributed to the improvement of the health of uninsured women and children, including a reduction in infant mortality from 16.5 per 1,000 live births in 2003 to 11.9 in 2010, Argentina has so far been less successful in reducing maternal mortality, which has remained above 4 per 10,000 births in recent years. A high percentage of these deaths is related to unsafe abortions.[60] Women and girls continue to face obstacles in accessing reproductive health-care services, such as contraception, resulting in a high rate of unwanted pregnancies and abortions, including unsafe abortions. Common barriers include long delays in service provision, unnecessary referrals to other clinics, financial barriers and outright refusals of service provision.[61]

64. Concerns have also been raised with the Independent Expert about the health effects of agropesticide spraying, including increased congenital birth defects and child cancers in certain areas that have witnessed an intensive increase in soybean production. Similar concerns have also been raised by the National Ombudsman,[62] the Committee on the Rights of the Child (CRC/C/ARG/CO/3-4, paras. 29 and 30) and the Special Rapporteur on the rights of indigenous peoples (A/HRC/21/47/Add.2, para. 39). The Independent Expert has transmitted the concerns brought to his attention to the relevant thematic special procedures for their further consideration. Nevertheless, he encourages the Government to take measures to prevent health impairments caused by agrochemicals, including through improved regulation and control of their use.

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[56] For information on health insurance coverage, see National Statistics and Census Institute (INDEC), *Censo 2010, Cuadro P11. Total del país. Population en viviendas particulares por cobertura salud y sexo, según provincia*, available from www.indec.mecon.ar/nuevaweb/cuadros/65/P11-Total_pais.xls.

[57] Cortez and Romero, "Argentina: Increasing utilization of health care services" (see footnote 11), p. 5

[58] Argentina, Ministerio de Salud, *El derecho a la salud. 200 años políticas sanitarias en Argentina*, (Buenos Aires, 2012), p. 304.

[59] For an evaluation of the Plan Nacer programme, see Cortez and Romero, "Argentina: Increasing utilization of health care services".

[60] PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio*, p. 59-64.

[61] See CEDAW/C/ARG/CO/6, para. 37; and Human Rights Watch, *Illusions of Care: Lack of Accountability for Reproductive Rights in Argentina* (New York, 2010).

[62] Argentina, Defensor del Pueblo de la Nación, *Informe especial sobre agrotóxicos y discapacidad*, Resolution No. 06/2012, 25 January 2012, available from www.dpn.gob.ar/noticias/noti421001.pdf.

D. Education

65. Argentina's school system and school infrastructure face ongoing challenges, including disparities across the provinces, improving the quality of education, and access to education and full enjoyment of the right to education for children with disabilities and indigenous children.

66. The Independent Expert welcomes the fact that the National Education Act (No. 26.206) explicitly recognizes the right to education and extends compulsory education to secondary level. He also commends the Government for Act No. 26.075 on Educational Spending which provides for at least 6 per cent of GDP to be devoted to education. While nearly all children of primary school age (99 per cent) are enrolled in primary schools and 96.5 per cent of children aged 12 to 14 are enrolled in secondary schools, the completion rate for secondary school (44.1 per cent) is rather low.[63] Census data indicate that the Government managed to halve the number of adolescents aged 12 to 17 years dropping out of school between 2001 and 2010, but the drop-out rate was still 8 per cent in 2010, with children from disadvantaged communities being the most affected.[64]

E. Adequate housing

67. Argentina continues to have a serious shortage of adequate housing and millions of Argentines continue to live in substandard conditions, including in slums and other types of inadequate housing (A/HRC/19/53/Add.1, para. 6). The Independent Expert is further concerned that only about 1 per cent of the national budget is devoted to addressing problems relating to housing.[65] This contrasts sharply with the 9 per cent of the national budget expected to be absorbed by debt service payments in 2014.

68. According to surveys by the Catholic University of Argentina in 2010, 2011 and 2012, 14.2 per cent of all persons in urban areas are without secure legal tenure, a problem affecting in particular residents of informal or precarious settlements, where more than half are without secure tenure. In addition, 13.4 per cent of the urban population lack direct access to the public drinking water network, a problem that is particularly widespread in the Greater Buenos Aires region, where 38.3 per cent of all households are excluded. Finally, 34.1 per cent of all urban households are not connected to a sewage network, a problem affecting 68 per cent of all households in informal settlements.[66]

69. The Independent Expert urges the Government to expand its investment in housing programmes, with a view to ensuring access to adequate and affordable housing with legal security of tenure for everyone, in line with recommendations made by the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3, para. 21) and the Special Rapporteur on adequate housing (A/HRC/19/53/Add.1, paras. 59–75).

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[63] PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio*, p. 12.

[64] Ibid., p. 14.

[65] Cogliandro, *Gasto Público Social* (see footnote 15), p. 33, indicates that, in 2013, 5.7 billion pesos were allocated to social housing programmes, while the overall 2013 national budget was 573 billion pesos.

[66] All data can be found in Salvia and others, *Desajustes en el desarrollo* (see footnote 51), pp. 85-138.

F. Poverty

70. It is generally acknowledged that poverty has been significantly reduced since the 2001 debt crisis. However, official statistics related to poverty and consumer price indices have generated much debate in recent years. Data from the National Statistics and Census Institute (INDEC) show that the poverty and extreme poverty levels have constantly declined since 2003, from 47.8 and 20.5 per cent to about 4.7 and 1.4 per cent respectively, according to the latest available data for the first half of 2013.[67] Conversely, independent research institutions, such as the Institute for Social, Economic and Public Policy Research (ISEPCi), estimate that nearly a quarter of the Argentine population (24 per cent) lives in poverty and that 5.6 per cent face extreme poverty.[68] Similar results have been presented by the Argentine Social Debt Observatory (ODSA) of the School of Economics, Catholic University of Argentina, and other research institutes.[69]

71. According to official statistics, both the national minimum wage (3,300 pesos a month in 2013) and the minimum pension (2,165 pesos in May 2013) are significantly above the poverty line of 1,734 pesos (during the third quarter of 2013).[70] However, independent research shows some discrepancies relating to the food basket. For example, the Centre for Participatory Economic and Social Policy Research (CIPPES) found that, depending on the province, between 4,191 and 4,922 pesos would be required to purchase the goods and services included in the basket used to calculate the poverty line. According to CIPPES, in October 2013, the extreme poverty line was somewhere between 1,838 and 2,159 pesos, depending on the province. This suggests that basic products and services required for maintaining a decent life may in reality be more than twice as expensive as official statistics indicate.

72. The Independent Expert further notes that both the Committee on the Rights of the Child (CRC/C/ARG/CO/3-4, para. 64) and the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3, para. 11) have previously expressed concern about the reliability of poverty and other official statistics. It would appear that as at the time of his visit to Argentina these issues had not yet been satisfactory addressed.

73. It is not the intention of the Independent Expert to draw conclusions on these divergent statistics. Rather, he wishes to underscore that the fight against poverty is a long-term process that requires significant investment and that, despite much progress, challenges remain, with a part of the population still facing extreme poverty, although its actual size may be contested. He calls upon the Government to continue its efforts to reduce poverty, in particular among children and adolescents, residents of informal settlements, indigenous people and other disadvantaged groups, as part of a comprehensive social equity strategy that goes beyond financial measures.

74. Finally, the Independent Expert considers that the Government should enhance its efforts to evaluate the impact of its social policies from a human rights viewpoint. For example, there is a need to study whether existing measures and the level of existing

[67] Data available from National Statistics and Census Institute (www.indec.gov.ar).

[68] ISEPCi, *Mapa de la pobreza y la exclusión*, Buenos Aires, July 2013.

[69] See, for example, Salvia and others, *Desajustes en el desarrollo* (see footnote 51), pp. 51-60, estimating that in December 2012 between 24.5 and 26.9 per cent of the population in urban regions lived below the poverty line and that between 4.9 and 5.8 per cent faced extreme poverty. Similar results have been reported in CIPPES, *Pobreza e Indigencia en Argentina 2013*, Diciembre 2013, available from www.cippes.org/cippes-uploads/archivos/boletin_pobreza_jun_2013_cippes.pdf.

[70] The official poverty line is measured by INDEC based on a basket of basic goods, food and services, while the extreme poverty line (*indigencia*) is based on a food basket containing only products representing minimum dietary needs.

benefits are sufficient to meet the essential minimum levels of social rights enumerated in international human rights treaties, and whether they are sufficient to move the impoverished out of poverty.

V. Need for a public debt audit

75. A significant share of the debt which the country is paying was incurred in questionable circumstances, particularly during military rule from 1976 to 1983. During that period, banks, international financial institutions and other countries continued to lend to Argentina, indirectly supporting an illegitimate government engaged in the repression and disappearance of its opponents. Most of the loans taken up during that period were not used for productive investments.[71] In 1982, when Argentina started to face a financial crisis, the military government assumed the foreign debt of private Argentine companies through a system of exchange rate guarantees, thereby transforming in a questionable manner private debt into public debt. Needless to say, the country's debt grew exponentially, from $7.8 billion in 1975 to $40.7 billion in 1982.[72]

76. According to World Bank estimates, of the nearly $45 billion dollars of loans taken up during that period, $2.5 billion were used to increase national foreign reserves; $13 billion to service interest payments; $10 billion for unregistered imports, most of which are considered to have been related to arms purchases; and $19 billion were capital outflows.[73] Beneficiaries included senior government officials who transferred funds to their foreign bank accounts; businessmen who engaged in financial speculation and transferred their profits abroad; and the armed forces, which used loans to purchase arms. The losers were the export industry; the formerly prosperous nationalized enterprises; and the Argentine people, who had and still have to repay the debts, making up a large percentage of the country's GDP.[74]

77. Given the questionable legitimacy of the military government and of many of its loan operations, the first democratic Government of President Raúl Alfonsín initially held the view that the debt inherited from the military dictatorship should not be repaid without a thorough investigation to clarify to what extent the debt was in fact legitimate. A moratorium on debt repayments was declared and, in February 1984, the Senate Investigatory Commission on Illicit Economic Activities was created and tasked with carrying out an investigation of the foreign debt incurred by the military regime. However, the mandate of the Commission was not extended beyond 1985 and it lacked sufficient budgetary resources and time to present a conclusive report. An investigating commission set up by the Central Bank and tasked with investigating the legitimacy of the external debt of the private sector was similarly dissolved before it could present any findings.

78. Neither the first democratic Government after the 1976 to 1983 military dictatorship, nor subsequent governments conducted any thorough investigation into the legitimacy of the debt incurred during the military dictatorship. The closest thing to an official

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[71] World Bank, *Argentina - Economic Memorandum*, vol. 1, Main report, A World Bank Country Study (Washington D.C., 1985), p. 17, para. 1.16, available from http://documents.worldbank.org/curated/en/1985/01/4392081/argentina-economic-memorandum-vol-1-2.

[72] Juan Pablo Bohoslavsky and Veerle Opgenhaffen, "The past and present of corporate complicity: financing the Argentinean dictatorship", *Harvard Human Rights Journal*, vol. 23 (2010), p. 189.

[73] World Bank, *Argentina - Economic Memorandum*, vol. 1 (see footnote 71), p. 17, para. 1.16.

[74] Sabine Michalkowski, *Unconstitutional Regimes and the Validity of Sovereign Debt* (Aldershot, Ashgate Publishing, 2007), p. 13.

investigation was a judicial inquiry based on a case filed before the Second Federal Criminal and Correctional Court of Argentina that culminated in a ruling after 18 years of investigation.[75]

79. In 1983, Alejandro Olmos, an Argentine national, filed a claim against the former Finance Minister, José Alfredo Martínez de Hoz, for fraud and abuse of authority in relation to the public debt incurred during the military dictatorship. His initial claim and other proceedings before the Argentine courts were later consolidated into a case that was investigated by the Second Federal Criminal and Correctional Court. In a lengthy judgement, summarizing the evidence and testimony presented during the investigation, Judge Jorge Ballesteros concluded as follows:

> The evidence introduced throughout these proceedings shows that the highest political and economic authorities of the country clearly acted in an arbitrary manner during the periods under consideration. This was also true for the directors and managers of some government-owned and privately-owned companies and organizations. The authorities did not hesitate to violate the Charter of the Argentine Central Bank; legal instruments were modified in order to extend the jurisdiction of foreign courts to cases that fell under the jurisdiction of domestic courts; and there were no accounting records of the foreign debt. For the purpose of sustaining the economic policy, government-owned companies were forced to incur debt in order to receive foreign currency that was kept by the Central Bank, and was later placed on the foreign exchange market. Furthermore, there was a lack of control over the debt incurred by government-owned companies and guaranteed by the State.[76]

80. Since the statute of limitations precluded the conviction of any accused person, the Court decided to refer its findings to the Congress, emphasizing at the same time that "the dismissal of this case should not preclude the members of the Argentine Congress from analysing the conclusions arrived at in these proceedings, in order to determine the potential political responsibility of each and every person involved in the events causing the enormous foreign debt of the Argentine Republic".[77] The court stated:

> This may be the time to reiterate such request in order to obtain a reduction in the financial cost of the debt, notwithstanding any other benefit that may be offered by creditor countries. However, as is clear from this ruling, the task of making such complex decisions is incumbent upon other branches of government. For that reason, this Court will send a copy of this decision to the Argentine Congress so that it may adopt — through the respective committees — such measures as it may deem fit with a view to arriving at the best solution possible regarding the negotiation of Argentina's foreign debt.[78]

81. To the knowledge of the Independent Expert, the Congress has not addressed to date the issues identified in the case. As mentioned earlier, he was not able to meet members of Congress to discuss the subject in more detail as he had hoped. This is regrettable given the obvious challenges that the debt problem has posed for the country.

82. It is critical that any strategy to address the country's debt problem in a decisive manner should include a transparent, participatory and comprehensive audit to ascertain the legitimacy or otherwise of the public debt. Under international law, debts assumed by

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[75] Second Federal Criminal and Correctional Court, Argentina, case No. 14.467, *Olmos, Alejandro S/Denuncia*, available from www.dipublico.com.ar/3844/olmos-alejandro-sdenuncia/.

[76] Ibid., Conclusiones, first paragraph (translated from the Spanish).

[77] Ibid., seventh paragraph.

[78] Ibid., twelfth paragraph.

unrepresentative regimes and not used for the benefit of the people are odious and not repayable.[79] In this regard, the Independent Expert calls upon the country's international lenders to support a transparent and participatory audit of Argentina's public debt and to unconditionally cancel any claims they may have should the audit find these to be odious or otherwise illegitimate.

VI. Conclusions and recommendations

83. **Argentina's experience highlights fundamental flaws in the global financial system and offers two important lessons. First, economic growth is a key precondition for debt repayment capacity, while unbridled fiscal austerity can only deepen a country's poor economic situation. Second, there is an urgent need for an independent international mechanism based on a clear set of binding rules and procedures for resolving sovereign debt problems and addressing capital flight.**

84. **In the light of the above, the Independent Expert makes the following recommendations to the Government of Argentina and its international creditors.**

A. Government of Argentina

85. **The Government of Argentina should:**

(a) Conduct a transparent, participatory and comprehensive audit of its public debt in order to obtain a clear picture of the circumstances in which the debt was incurred and, in particular, to ascertain the extent to which the debt can be deemed to be odious;

(b) As a matter of priority, enact national legislation to limit the ability of vulture funds to pursue before Argentine courts immoral profits at the expense of the poor and most vulnerable through protracted litigation, and actively promote the enactment of such legislation by other countries both within and outside its region;

(c) Renew its efforts to promote social, economic and cultural rights, including the rights to education, health, water and sanitation and adequate housing, and to ensure the minimum essential levels of these rights for all;

(d) Take measures to address gender-based inequality in the labour market as outlined in the present report;

(e) Intensify its efforts relating to the inclusion of workers in the social security system so as to reduce informal employment to less than 30 per cent by 2015;

(f) Take measures to eliminate the social and economic factors contributing to child labour and continue to strengthen its efforts and structures to eliminate child labour, especially its worst forms;[80]

(g) Take measures to address the problems of children remaining outside the education system, illiteracy, course repetition and school dropout;

(h) Strengthen its efforts to remove disparities in access to and the quality of education between different social groups, including implementing necessary

[79] See A/64/289.

[80] See also CRC/C/ARG/CO/3-4, para. 74.

measures to ensure the education of children with disabilities in its regular school system;[81]

(i) As a matter of urgency, adopt measures to ensure unrestricted and non-discriminatory coverage of social benefits, including non-contributory pensions and the universal child allowance, for marginalized and disadvantaged groups, such as migrants and their children;

(j) Strengthen its efforts to reduce poverty, particularly among children and adolescents, residents of informal settlements, indigenous people and other disadvantaged groups, as part of a comprehensive social equity strategy that goes beyond financial measures;

(k) Ensure women's, including teenagers, access to health services, including sexual and reproductive health services, and adopt the necessary measures to further reduce the high maternal mortality rate;[82]

(l) Take measures to improve the availability of reliable, disaggregated and comprehensive data to inform the formulation and implementation of public policies, including statistics on inflation and poverty, and to ensure that the methodologies used and data gathered by the National Statistics and Census Institute (INDEC) are accessible to external users and adequately disseminated;

(m) Enhance its efforts to evaluate the impact of its social policies from a human rights viewpoint, including assessing whether existing measures, such as minimum wages, minimum pensions and other social benefits, are sufficient to meet the essential minimum levels of social rights enumerated in international human rights conventions, including whether their level is sufficient to move the impoverished out of poverty.

B. Argentina's international creditors

86. **Argentina's international creditors should:**

(a) Support a transparent, participatory and comprehensive audit of Argentina's public debt and, in keeping with the principle of shared responsibility for preventing and resolving unsustainable debt situations, unconditionally cancel any claims they may have should the audit find these to be odious;

(b) As a matter of priority, enact national legislation to combat extortionate litigation by vulture funds;

(c) Support the establishment of an international rules-based framework for the impartial, efficient and rights-sensitive resolution of sovereign debt problems;

(d) Ensure that any sovereign debt restructuring agreements reflect the primacy of human rights obligations, particularly those of Argentina to its population.

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[81] See also E/C.12/ARG/CO/3, para. 24; CRC/C/ARG/CO/3-4, para. 68; CRPD/C/ARG/CO/1, paras. 37 and 38; and A/HRC/21/47/Add. 2, para. 106.

[82] See also CEDAW/C/ARG/CO/6, para. 38.